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HENRY'S FORK OF THE SNAKE RIVER PROTECTION ACT OF 1986

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2635

A BILL TO PROTECT THE INTEGRITY AND QUALITY OF CERTAIN REACHES OF THE HENRY'S FORK OF THE SNAKE RIVER, IDAHO, AND FOR OTHER PURPOSES

AUGUST 11, 1986

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HENRY'S FORK OF THE SNAKE RIVER PROTECTION ACT OF 1986

MONDAY, AUGUST 11, 1986

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:38 a.m. in room SD-366, Dirksen Senate Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Johnston, and Bradley.

Also present: Russell R. Brown, professional staff member, and William B. Conway, counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The subcommittee will come to order. Good morning.

Today the Subcommittee on Water and Power will receive testimony on S. 2635, a bill to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, ID.

Introduced on June 26, 1986, by myself and Senator Symms, S. 2635 is designed to protect from future hydroelectric development approximately 60.9 miles of the Henry's Fork of the Snake River, a river long recognized as possessing outstanding and in many ways unique natural scenic and recreational values.

Following an extensive discussion with a wide range of interest groups, and after a personal inspection of the entire river, it became very apparent that the overwhelming majority of people were alarmed at the number of hydroelectric projects proposed for the Henry's Fork.

At the same time, however, they were equally concerned that the river remain in its present ownership status, with management by private area landowners, local government entities, the U.S. Forest Service, and the State of Idaho. They were concerned that inclusion in the Wild and Scenic Rivers System, and perhaps even the study for inclusion in the system, would highlight the Henry's Fork to the rest of the Nation to the point that current management could no longer exist. The visitation levels simply could not allow it.

In short, I believe the people were telling us that we did not need overkill in our efforts to fix a problem. All we needed to do was to preserve the status quo. And I believe this legislation does just that.

As introduced, S. 2635 will prohibit all future hydroelectric development on the Henry's Fork except for one at the Island Park Dam where the impoundment structure already exists.

Under existing requirements of the Federal Energy Regulatory Commission, this one application of the Fall River Rural Electric Cooperative could proceed, providing the FERC also determines that "significant and permanent alteration of stream flow, habitat, water temperature, and quality will not occur as a result of the project."

Development of this project at the existing Island Park Dam is widely supported by area residents, ratepayers, and by many concerned environmentalists, providing there is no alteration of the quality of the river. It would appear that the project applicants can and are willing to meet those standards, and therefore this legislation would allow that specific project to proceed if it can meet those standards.

The Henry's Fork has an international reputation as one of the best fishing streams in the United States. Trumpeter swans winter on the river at Harriman State Park. The entire segment is an essential bald eagle habitat.

In general terms, the Henry's Fork of the Snake River flows southward within the boundary of the Targhee National Forest in southeastern Idaho, just West of Yellowstone National Park.

Land ownership along the river is a mixture of predominantly national forest, State, and private. There are several existing shoreline developments along the river and two hydroelectric power projects are currently in operation. About 7 miles of the river flows through Harriman State Park.

I suppose we might at this point make a footnote to the passing of Averell Harriman, who was so instrumental in preserving and making possible the donation of the land to the State at a time when Robert Smiley was Governor of the State of Idaho, and in whom we can focus a little bit of gratitude for the existence of the State park. I think it is a magnificent example of what can be done.

Existing uses include fishing, float boating, camping and sightseeing. Fly fishermen claim that the river is the finest stream in the country for large rainbow trout. And I cannot personally attest by my own success at catching those large rainbow, but I can attest that they are there because I saw some.

River waters are entirely appropriated by the Fremont-Madison Irrigation District. There has been significant summer home development in the area, including resorts and lodges.

The Henry's Fork of the Snake River is the dominant feature of what is known as the Island Park area, and the entire area is widely used by recreationists from nearby communities and by many millions of visitors traveling through on their way to and from the west entrance to the Yellowstone National Park. Additionally, snowmobiling and cross-country skiing have become dominant winter activities, making the area a year-round haven for recreationists.

As most involved with this issue know, legislation has passed the House of Representatives which would designate a portion of the

Henry's Fork, about 42 miles, in a study for possible inclusion in the Wild and Scenic Rivers System.

I think it is important to emphasize that the approach Senator Symms and I have taken with S. 2635 is in our opinion superior for two reasons:

First, our legislation encompasses a longer stretch, about 60.9 miles, of the Henry's Fork, including that section of the tributary originating at Big Springs.

Second, as I pointed out earlier, not only is there no need to add another layer of Federal regulation in the management of this river, the people clearly do not want such additional intrusion.

The majority of those who care about the future of the Henry's Fork want it left the way it is. They do not want hydroelectric development which may alter the integrity of the river. But neither do they want all the restrictions, including the potential loss or limitation on water rights, brought on by inclusion in the Wild and Scenic Rivers System.

S. 2635 will accomplish both these goals. It will protect a magnificent river, a river whose primary and best use is that of recreation. It will continue the traditional mix of Federal, State and local management which has proven so effective and successful for so many years.

At this point I would ask that a copy of the bill and all related legislative reports appear in the record.

[The text of S. 2635 and report from the Federal Energy Regulatory Commission follow:]

II

99TH CONGRESS
2D SESSION

S. 2635

To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 26 (legislative day, JUNE 23), 1986

Mr. MCCLURE (for himself and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Henry's Fork of the Snake River Protection of 1986".

GRANTING OF FERC LICENSES AND PERMITS

SEC. 2. Except as set forth in section 3 of this Act, the Federal Energy Regulatory Commission (FERC) is prohibited from taking any action, other than denial, on any application for a license, preliminary permit, or exemption or any

further action on an issued preliminary permit pursuant to sections 4(e), 4(f), and 30 of the Federal Power Act, as amended (16 U.S.C. 797(e–f), and 823), for any project proposed to be cited on or adjacent to that portion of Henry's Fork of the Snake River, Idaho (including that segment originating at Big Springs), or its tributaries within one-half mile of their confluence with Henry's Fork of the Snake River, from its point of origin at Henry's Lake, Idaho to the point of its confluence with the backwaters of Ashton Reservoir, Idaho.

SEC. 3. The prohibition in section 2 of this Act shall not apply to the application for license filed for the Island Park Dam Hydropower project (FERC project numbered 2973): *Provided*, That such license may be approved only if FERC determines that significant and permanent alteration of streamflow, habitat, water temperature, and quality will not occur as a result of the project.

SEC. 4. (a) Nothing in this Act shall be construed as authorizing (either expressed or implied) the appropriation or reservation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act (1) affect the rights or jurisdictions of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource, (2) alter, amend, repeal, interpret, modify, or be in

conflict with any interstate compact made by the States, (3) be construed to alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right, or (4) otherwise be construed to affect the validity of any existing license, permit, or certificate (other than as set forth in section 2) issued by any Federal agency pursuant to any other Federal law.

(b) With respect to this Act, no other provision of any other Federal law shall be construed as authorizing the implied appropriation or reservation of water by any Federal agency.

○

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 20, 1986

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
AUG 28 1986
WASHINGTON D C 20510

Honorable James A. McClure
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairman McClure:

Thank you for your letter of July 29, 1986, to Acting Chairman Sousa transmitting S.2635, a bill to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River in Idaho. You have asked that we study the bill and submit a report to you thereon. Your letter has been referred to me for response.

S.2635 would prohibit the Federal Energy Regulatory Commission from taking any action, other than denial, on any application for a license, preliminary permit, or exemption, or any further action on an issued preliminary permit, for hydroelectric projects on designated sections of the Henry's Fork. To avoid possible questions as to whether "5-MW or under" exemptions are intended to be covered, in addition to conduit exemptions, the Committee may wish to include, in the statutory references in Section 2 of the bill, a specific reference to Section 405(d) of the Public Utility Regulatory Policies Act, as amended, 16 U.S.C. § 2705(d).

There is one exception to this prohibition. Section 3 of S.2635 states that the bill's prohibition on licensing shall not apply to an application for license for Project No. 2973, but that the license may be approved only if the Commission determines that certain changes in the streamflow, habitat, water temperature, and quality of the Henry's Fork will not occur as a result of the project. The license application for Project No. 2973 has received public notice, and Federal and state agencies and members of the public have provided comments on the proposed project. The Commission's staff is continuing its processing and analysis of the license application.

S.2635 would appear to prohibit totally any future hydroelectric development, for which Commission authorization is required, on Henry's Fork or its tributaries within one-half mile of their confluence with the Henry's Fork, from Henry's Lake to the backwaters of Ashton Reservoir. The bill would preclude any authorized hydroelectric development because it explicitly disallows issuance of

any preliminary permit, license, or exemption from licensing. Furthermore, the bill would preclude unauthorized hydroelectric development because it does not exclude the waterway from the Commission's jurisdiction under the Federal Power Act, and thus would leave intact the Commission's enforcement power to protect against unauthorized development. If this bill were enacted, additional legislation repealing or amending these provisions would be required before any future hydroelectric development on this part of Henry's Fork could be authorized.

Enactment of S.2635 would require certain administrative steps, since it would prohibit the Commission from taking any additional action on preliminary permits already issued for sites within the river sections designated in the bill. The Commission would have to inform the holders of five existing preliminary permits, who would be affected by the bill, that it would be unable to grant a license for their proposed projects if they chose to file a license application.

I trust this information will be helpful to the Committee. Similar information has been supplied to your Subcommittee on Water and Power in testimony by Commission officials on August 11, 1986.

If I can be of any further assistance in this or any other Commission matter, please let me know.

Sincerely,

Christopher J. Warner

Christopher J. Warner
Associate General Counsel
Legislation, Regulation and
Congressional Affairs

The CHAIRMAN. In addition, I would note that the hearing record will remain open 1 week for those who wish to submit statements on this legislation. By that 1 week, so that people may be fully apprised, that will be close of business as of the end of this week, and not into next week.

I will ask that Senator Symms, Congressman Craig, and the Governor all take seats at the table, and we will hear you en banc if there be no problem with that. It might expedite our hearing today.

At this point I will yield, first to my distinguished colleague the Senator from Louisiana, Senator Johnston.

Senator JOHNSTON. Thank you, Mr. Chairman. Mr. Chairman, I have no statement other than to welcome our distinguished witnesses this morning.

The CHAIRMAN. This is a subcommittee hearing. The chairman of that subcommittee is Senator Murkowski from Alaska, and I thank him also for his support of the legislation, and for scheduling this hearing at our request. And with that I will turn the time over to the junior Senator from Idaho, my colleague Senator Symms.

STATEMENT OF HON. STEVE SYMMS, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Thank you, Mr. Chairman and your distinguished colleague, the ranking member of the committee.

I am delighted to have the opportunity to testify on a matter that I think is of great importance to our State. Like many of our State's problems, Mr. Chairman and Senator Johnston, our problem has its roots on the reliance that Idaho has on our vast natural resources and the fact that 64 percent—and I underscore that, 64 percent—of the great State is owned by the Federal Government.

Now, my philosophy has always been and will continue to be so, that the people along the banks of the Henry's Fork and the banks of the Snake are in a much better position to provide management of those valuable resources and of Idaho's problems than are the people along the banks of the Potomac River, nearly 3,000 miles away.

The principal issue on the Henry's Fork is hydroelectric development, and the legislation, Mr. Chairman, that you and I have sponsored adequately addresses that problem. As you have very correctly stated, Henry's Fork is one of the Nation's most beautiful and productive fishing streams. It must be protected from inappropriate development, but with an absolute minimum of interference to local uses and enjoyment.

Now, Mr. Chairman, we introduced this legislation because of the local concerns about the proposed hydroelectric developments on this priceless stretch of water. Those local concerns were expressed to me last spring when I was at the fisherman's breakfast in St. Anthony, and it was made very clear to me that these fine people, most of whom were fishermen, wanted Henry's Fork to stay as it now is.

I also had meetings with other interest groups that had worked for the preservation of the river, and I come to the conclusion that

that is the proper solution to the problem. I have here some information.

I have a chart here. I think the Chairman is familiar with it, but I will just go to the chart to point here at this stretch of river which starts at Henry's Lake and ends at Ashton Reservoir, flows out of the lake near the continental divide.

And the second major tributary is here at Big Springs, at Clearwater Springs, which also is close to the continental divide. When the two forks combine, the annual stream flow averages about 1,000 cubic feet per second. The water rights for downstream irrigation are recognized for the entire flow of this stream.

Several applications have been filed for permits for hydroelectric development projects along Henry's Fork, and I just point to where these are. The first one is here, Island Park, and then there is No. 2, is Henry's Fork 1, and George 1 and then George 2, Henry's Fork 2, and George 3 is right here at this location.

Sheep Falls is at this location, Upper Mesa Falls here, and Lower Mesa Falls here at point No. 7 on the chart. If you want to come out and look at that later, you can inspect that to see where it is.

But this is, for the members of the committee that are not as familiar with the area—the chairman is—but it is fabulous recreation country. It is close to Yellowstone and the Teton National Parks, running through Idaho's Island Park area.

And in 1985 the Forest Service estimated that there were 137,000 people visited this stretch of the river. So the recreation days of use are substantial along Henry's Fork. The heaviest recreation uses were camping, summer home occupancy, and fishing, in that order.

The river produces trophy, rainbow, brown, and cutthroat trout. And Mr. Chairman, I am surprised that you did not attest to the fact of how many you had caught there.

The CHAIRMAN. Well, if you want me to indulge in a typical fisherman's tale, I will tell you about the big ones that got away. They are still there.

Senator SYMMS. Well, that is good.

It is also significant that we have populations of bald eagles and trumpeter swans there. Now, the water quality is generally good to excellent, but there has been a bacterial problem right here in the Big Springs area. This will presumably be solved when the sewage system which is now under construction is put into place and completed.

Although there have been some adverse effects from the streamside grazing, the Forest Service does not consider that to be a serious problem. The land along Henry's Fork is primarily federally owned, although there is significant State ownership at the Harriman State Park.

So I think it is most important that our bill move forward, and I would ask unanimous consent, Mr. Chairman, at this point in the record to put into the record an article written by yourself which was in the Idaho Statesman Sunday, August 3.

It says: "Why would anyone grant control of the river to the feds? 'And I think that the article is most explanatory, and I think that with the experiences we have had with flooding in the town of Salmon—I might just comment on that for the benefit of Senator Johnston.

The CHAIRMAN. Without objection, the article will be placed in the record following your statement.

Senator SYMMS. With the Wild and Scenic and recreation classifications, Senator Johnston, we have a problem in the town of Salmon, Idaho, where about every third year we end up having a flood. The cause of the flood is because about 100 years ago on Dump Creek, where the placer miners were, an alluvial dam moved across and blocked the flow of the Salmon River about 15 to 20 miles below the town of Salmon and it causes the water to be still.

So when the temperature goes below 20 degrees below zero, it starts an ice jam, backs the river up, and floods the town, at a cost of about $3 to $4 million in emergency funds. That is about what we end up spending in emergency relief funds each time.

Senator JOHNSTON. Is the town of Salmon along that stretch?

Senator SYMMS. No; this is not the same stream. But I want to make the point of why I think we should pass the McClure bill and not have wild and scenic classification of the river.

This is in another area of the State, but because of the fact that the Salmon River is classified we have never been able to, even though the Corps has cooperated, we have never been able to get the plug cleaned out of the river, because of all the legal ramifications. So therefore we still have this contentious problem of flooding that takes place that could be avoided, and so that is why I would urge all members of the committee to read the chairman's comment.

And I would just say again, why would anyone grant control over the river to the feds when the people along the river in my view can adequately protect the river and take care of it if we give them this one assurance, and that is that there will not be hydroelectric development, and then this river will be well protected and the people that live there will take care of it.

And the only concern, I think the conclusion Senator McClure and I have come to, is that we simply do not need to turn the river over to the Federal Government to protect. We just need to not grant licenses and it will be adequately protected.

That basically for now, Mr. Chairman, unless there are questions, would be all I would comment on at this point.

[The prepared statement of Senator Symms follows:]

STATEMENT BY

BY

SENATOR STEVE SYMMS

ON

HENRY'S FORK RIVER PROTECTION ACT OF 1986

MR. CHAIRMAN:

WE ARE HERE TODAY TO DISCUSS A PROBLEM WHICH, LIKE MANY OF OUR STATE'S PROBLEMS, HAS ITS ROOTS IN OUR RELIANCE ON IDAHO'S VAST NATURAL RESOURCES AND THE FACT THAT 65% OF OUR STATE IS OWNED BY THE FEDERAL GOVERNMENT.

MY PHILOSOPHY IS THAT THE PEOPLE ON THE BANKS OF THE SNAKE ARE BETTER ABLE TO MANAGE OUR VALUABLE RESOURCES AND DEAL WITH IDAHO'S PROBLEMS THAN ARE THE PEOPLE ON THE BANKS OF THE POTOMAC.

MR. CHAIRMAN, THE PRINCIPAL ISSUE ON THE HENRY'S FORK IS HYDRO-ELECTRIC DEVELOPMENT; THE LEGISLATION THAT YOU AND I HAVE SPONSORED ADEQUATELY ADDRESSES THAT PROBLEM.

THE HENRY'S FORK IS ONE OF THE NATION'S MOST BEAUTIFUL AND PRODUCTIVE FISHING STREAMS. IT MUST BE PROTECTED FROM INAPPROPRIATE DEVELOPMENT, BUT WITH AN ABSOLUTE MINIMUM OF INTERFERENCE WITH LOCAL USES AND ENJOYMENT.

MR. CHAIRMAN, WE INTRODUCED THIS LEGISLATION BECAUSE OF THE LOCAL CONCERNS ABOUT THE PROPOSED HYDRO-ELECTRIC DEVELOPMENTS ON THIS PRICELESS STRETCH OF WATER. THOSE LOCAL CONCERNS WERE EXPRESSED TO ME LAST SPRING WHEN I WAS AT THE FISHERMAN'S BREAKFAST IN ST. ANTHONY. IT WAS MADE CLEAR TO ME THAT THOSE FINE PEOPLE -- MOST OF WHOM ARE PROBABLY FISHERMAN -- WANTED HENRY'S FORK TO STAY AS IT IS RIGHT NOW. OUR BILL WILL ENSURE THIS.

ON THE OTHER HAND, IT APPEARS THAT THE GOVERNOR ADVOCATES A STUDY TO DETERMINE THE DESIRABILITY OF CLASSIFYING THE HENRY'S FORK A "WILD & SCENIC RIVER"

THAT SEEMS TO BE HIS STANDARD RESPONSE TO OUR STATE'S PROBLEMS -- APPOINT A TASK FORCE AND STUDY THE PROBLEM. HIS TASK FORCE ON CANADIAN TIMBER IMPORTS CREATED WITH GREAT BALLYHOO NEARLY A YEAR AGO HAS YET TO MEET WITH THE CANADIANS OR MAKE AN IOTA OF PROGRESS.

THE DESIRE TO TALK AND TALK ABOUT PROBLEMS IS WHY IDAHO IS NOT MOVING FORWARD. TESTING THE WATERS BEFORE ACTING IS NOT LEADERSHIP. POLITICAL EXPEDIENCY HAS NEVER PRODUCED ONE JOB IN OUR STATE: IT HAS COST US JOBS. WE NEED MORE PEOPLE SOLVING PROBLEMS AND FEWER PEOPLE STUDYING THEM.

THE GOVERNOR HAS SAID, MR. CHAIRMAN, THAT HE SUBMITTED LEGISLATION TO THE IDAHO LEGISLATURE THIS YEAR THAT WOULD HAVE MADE THE HENRY'S FORK PART OF THE NATURAL AND RECREATIONAL RIVER SYSTEM. THE LEGISLATION CREATING THAT SYSTEM NEVER SAW THE LIGHT OF DAY AS LAW BECAUSE IT IS NOT WHAT THE PEOPLE OF IDAHO WANT.

THE FOREST SERVICE, EARLY IN THEIR PLANNING PROCESS ON THE TARGEE NATIONAL FOREST, DECIDED TO STUDY THE HENRY'S FORK FOR WILD RIVER STATUS. IT'S HARD TO SEE THE JUSTIFICATION -- EXCEPT FOR SOME POSSIBLE POLITICAL RHETORIC -- OF AN ADDITIONAL, CONGRESSIONALLY MANDATED STUDY.

EXPERIENCE WITH THE WILD & SCENIC RIVERS SYSTEM HASN'T BEEN GOOD. I'M SPEAKING, OF COURSE, OF THE FEDERAL PROGRAM THAT ALLOWS CONGRESS TO DECLARE SPECIFIC RIVERS AS "WILD", "SCENIC" OR "RECREATION" AND CONTROL THE USE OF THOSE RIVERS.

POSSIBLY, THE GOVERNOR HAS FORGOTTEN THE PROBLEM OF THE CITY OF SALMON -- A PROBLEM FROZEN IN PLACE BY WILD & SCENIC RIVER REGULATIONS. I HAVEN'T.

PERIODICALLY, THE CITY OF SALMON IS FLOODED BECAUSE OF ICE DAMS IN THE SALMON RIVER DOWNSTREAM FROM THE CITY. THE ICE DAMS FORM BECAUSE THE RIVER FLOW IS OBSTRUCTED BY AN UNNATURAL OBSTRUCTION CREATED DECADES AGO BY THE WASHOUT OF A MAN MADE DIVERSION DITCH, AND THE CURRENT IS VERY SLOW. THIS PROBLEM COULD BE SOLVED BY DEEPENING THE CHANNEL THRU THE SHALLOW AREA BELOW THE SLACK WATER WHICH WOULD ACCELERATE THE CURRENT.

HOWEVER, THIS IS A "RECREATIONAL" SEGMENT UNDER THE WILD & SCENIC RIVERS CLASSIFICATION, AND NO DISTURBANCE IS ALLOWED. I AND MY STAFF HAVE WORKED VERY HARD TO FIND A WAY TO HELP THE PEOPLE OF SALMON, BUT SO FAR WE HAVEN'T BEEN SUCCESSFUL. WITH MY COOPERATION THE CORPS OF ENGINEERS HAS, IN GOOD FAITH I BELIEVE, EVALUATED SEVERAL ALTERNATIVES FOR PREVENTING FLOODING AT SALMON. THE WILD RIVER RESTRICTIONS HAVE DEFEATED THEM ALL SO FAR.

PROTECTION UNDER THE WILD & SCENIC RIVER CLASSIFICATION CARRIES A REAL THREAT TO PRIVATE LANDOWNERS WITHIN THE 1/4 MILE CORRIDOR ON EITHER SIDE OF THE RIVER. WILD RIVER PROTECTION CAN BE USED TO THWART PRIVATE RIGHTS AND PREVENT EVEN MINOR CHANGES IN USES.

WHEN PORTIONS OF THE CLEARWATER RIVER IN IDAHO WERE CLASSIFIED, HOME OWNERS ADJACENT TO THE RIVER DISCOVERED THE REACH AND POWER OF THE

GOVERNMENT. ONE RANCHER ON THE SNAKE RIVER (BEFORE IT BECAME A WILD RIVER) WAS THREATENED WITH CONDEMNATION; AND THEN IN THE NEXT BREATH WAS OFFERED A JOB MANAGING HIS RANCH WHICH WAS SOON TO BECOME GOVERNMENT PROPERTY: THE VERY RANCH HIS FAMILY HAD OWNED FOR GENERATIONS.

THE PREVIOUS WITNESS'S APPROACH TO WILDERNESS FOLLOWS THE SAME THINKING -- LET THE GOVERNMENT TAKE CONTROL; LOCK UP OUR RESOURCES AND WATCH IDAHO JOBS DISAPPEAR.

IN 1984 THE IDAHO CONGRESSIONAL DELEGATION WAS WELL ON THE WAY TO WORKING OUT A WILDERNESS ACCOMMODATION FOR THE STATE OF IDAHO. THE LOCAL PEOPLE REPRESENTED BY THEIR COUNTY GOVERNMENTS OVERWHELMINGLY SUPPORTED OUR POSITION.

THE POTENTIAL FOR SOLVING THE PROBLEM WAS WITHIN OUR GRASP UNTIL THE GOVERNOR BROUGHT IN AN EASTERN EXPERT ON IDAHO -- REP. JOHN SEIBERLING FROM OHIO.

AFTER MR. SEIBERLING FLEW AROUND THE STATE; HE PROMISED THE WILDERNESS ADVOCATES THAT NO NATIONAL FOREST LAND IN IDAHO WOULD BE RELEASED FROM WILDERNESS CONSIDERATION WITHOUT <u>THEIR</u> APPROVAL. WITH THIS GUARANTEED VETO OF A REASONABLE SOLUTION; ANY POSSIBILITY OF COMPROMISE WAS GONE. AS A RESULT; ABOUT 1/4 OF THE FOREST SERVICE'S PROJECTED TIMBER HARVEST IN IDAHO FOR THE NEXT TEN YEARS MAY NOT BE AVAILABLE; AND THAT MEANS MORE LOST JOBS.

MR. CHAIRMAN, OUR BILL WILL KEEP HENRY'S FORK BEAUTIFUL AND PRODUCTIVE. IT WILL CONTINUE TO OFFER WORLD CLASS FISHING AND WORLD CLASS BEAUTY TO ALL OF US. BUT IT WILL DO SO WITHOUT ENCROACHING ON PRIVATE PROPERTY RIGHTS AND LOCAL GOVERNMENT.

I URGE THAT THIS LEGISLATION BE ENACTED AS SOON AS POSSIBLE.

FACTS ON HENRY'S FORK

THE **HENRY'S FORK** OF THE SNAKE RIVER:

- *FLOWS OUT OF HENRY'S LAKE IN EAST CENTRAL IDAHO NEAR THE CONTINETAL DIVIDE.
- *A SECOND MAJOR TRIBUTARY BEGINS AT **BIG SPRINGS**--A CLEAR WATER SPRING--ALSO CLOSE TO THE CONTINENTAL DIVIDE.
- *WHEN THE TWO FORKS COMBINE THE ANNUAL STREAM FLOW AVERAGES ABOUT 1000 CFS.
- ***WATER RIGHTS** FOR DOWN-STREAM IRRIGATION ARE RECOGNIZED FOR THE ENTIRE FLOW OF THE STEAM.

HYDRO APPLICATIONS

- *SEVERAL APPLICATIONS HAVE BEEN FILED FOR PERMITS TO DEVELOP HYDRO-ELECTRIC PROJECTS ON THE HENRY'S FORK.

FLOW OF HENRY'S FORK

- *FROM ITS ORIGIN AT **6400 FEET ABOVE SEA LEVEL**; IT HAS A GENERALLY MODERATE CURRENT WITH AN ELEVATION OF **5270 FEET AT ITS CONFLUENCE** WITH **WARM RIVER**.

RECREATION COUNTRY

*THIS IS FABULOUS RECREATION COUNTRY; CLOSE TO YELLOWSTONE AND TETON NATIONAL PARKS AND RUNNING THRU IDAHO'S ISLAND PARK AREA.

*IN 1985 THE FOREST SERVICE ESTIMATED A TOTAL OF ALMOST 137,000 VISITOR DAYS RECREATION USE ALONG THE HENRY'S FORK.

*THE HEAVIEST RECREATION USES WERE DEVELOPED CAMPING; SUMMER HOME OCCUPANCY AND FISHING IN THAT ORDER.

*THE HENRY'S FORK PRODUCES TROPHY RAINBOW; BROWN AND CUT-THROAT TROUT.

*ALSO; SIGNIFICANT POPULATIONS OF BALD EAGLES AND TRUMPETER SWANS UTILIZE THE HENRY'S LAKE & HENRY'S FORK AREA.

WATER QUALITY

*WATER QUALITY IN THE RIVER IS GENERALLY GOOD.

*A BACTERIAL PROBLEM IN THE IN THE BIG SPRINGS-LAST CHANCE AREA WILL PRESUMABLY BE SOLVED WHEN A SEWAGE SYSTEM NOW UNDER CONSTRUCTION IS COMPLETED.

*ALTHOUGH SOME ADVERSE EFFECTS FROM STREAM-SIDE GRAZING HAVE BEEN REPORTED; THE FOREST SERVICE DOES NOT CONSIDER THIS A SERIOUS PROBLEM.

*THE LAND ALONG THE HENRY'S FORK IS PRIMARILY FEDERALLY OWNED; ALTHOUGH THERE IS SIGNIFICANT STATE AND PRIVATE OWNERSHIP.

*THE HENRY'S FORK IS AN IMPORTANT RESOURCE.

Insight

Close-up

Henrys Fork

What is the best way to protect the Henrys Fork of the Snake River? Today's Statesman Close-up offers two perspectives on the issue.

Why would anyone grant control of river to feds?

Jim McClure, a Republican, is Idaho's senior senator.

Question: What's the best way to protect the Henrys Fork of the Snake River?

a) Don't do anything.

b) Prohibit hydroelectric development.

c) Put control of the river and its banks in the hands of the federal government.

That's the question I put to a group of Island Park residents several weeks ago. Their consensus was that hydroelectric development should be prevented on the Henrys Fork.

That's the conclusion Sen. Steve Symms and I have come to as well. Our bill immediately prohibits the Federal Energy Regulatory Commission from approving any hydroelectric licenses between Henrys Lake and Ashton Reservoir, including the Big Springs tributary.

There is one exception, however. The only hydro application that could be pursued under our bill is the one proposed at Island Park Dam, which doesn't require a new impoundment. That doesn't necessarily mean that we wholeheartedly endorse the project, but that it can go through only under very tough environmental restrictions.

Another option for the river — a Wild and Scenic River study — has been proposed by some, including Gov. John Evans and Rep. Richard Stallings. Now the words "wild" and "scenic" have an appealing ring to them. But experience with Wild and Scenic River designation tells me it's the wrong way to go on the Henrys Fork.

A Wild and Scenic designation imposes an entirely new layer of federal control over a river and the surrounding lands. Ironically, it's the very people who want the Henrys Fork protected who could be restricted from using the river under a Wild and Scenic designation. The stretch of the Snake River that runs through Hells Canyon provides a good example. While there were few problems during its first few years of Wild and Scenic management, the federal government cut back recreation access to the river over time.

I'm afraid the same could happen on the Henrys Fork. If it becomes part of the Wild and Scenic River System, I can almost guarantee that the responsible access sportsmen and others enjoy today will eventually be restricted by the federal government — fishing, camping, boating and more.

Frankly, I can't understand why anyone would want to grant control of the Henrys Fork to the federal government, because cooperation within the state can produce good management decisions. For example, the Idaho Park Foundation, the Henrys Fork Foundation and several other groups and agencies worked together to install a solar-powered electric fence that will fight erosion caused by grazing on the river's edge. Fremont County has barred motorboats between Osborne Bridge and Riverside Campground. Those kinds of decisions can — and should — be made at the state and local level.

All of us who care about the Henrys Fork have the same goal: keep this gem of a river protected. The differences lie in how you do it. Our proposal gives the river immediate protection 'from' hydroelectric development, while it protects the right of all Idahoans to use and enjoy the river in an environmentally responsible manner. And most of all, it gives Idahoans greater power to make those decisions.

The CHAIRMAN. Thank you very much.
Congressman Craig.

STATEMENT OF HON. LARRY CRAIG, U.S. REPRESENTATIVE FROM THE STATE OF IDAHO

Mr. CRAIG. Thank you very much, Mr. Chairman, Senator Johnston, Senator Symms, Governor Evans.

Mr. Chairman, let me thank you for allowing me to come from the other body over to testify on what I think is a critical issue to the State of Idaho. I think you and Senator Symms have adequately described the assets of this marvelous stretch of water out in Idaho, so I will not embellish that any for sake of time.

But I think what you said, what Senator Symms has said, and what I agree with, has resulted in why we think the Henry's Fork deserves protection and why your legislation, S. 2635, is the appropriate approach toward preserving the fishing, the floating, the boating, the camping, the recreational use, without endangering it through additional hydro development.

Unfortunately, there seem to be differences of opinion on how best to accomplish what I think everybody perceives as a worthy goal, Mr. Chairman. After careful study of the available alternatives, I became convinced that your approach was the best approach.

In discussions with my staff and with residents of Idaho, it became clear to me that the impetus behind the other opinion's approach toward pushing for federally legislated protection of the river was to accomplish exactly what we were setting out to accomplish, and that is to protect it from future hydro development.

In 1981, the first of numerous hydropower projects was proposed for the Henry's Fork. This and the following proposals generated much public interest, since inherent in the development of the river was the potential for diminishing those values which have made the Henry's Fork the highly publicized, highly prized area that it is, not only to the local residents, to the citizens of the State of Idaho, but to the international reputation that it has developed.

S. 2635 effectively eliminates the possibility of future hydro development by prohibiting the Federal Energy Regulatory Agency from licensing future hydroelectric projects, with one exception as you have mentioned, Mr. Chairman, on a specified segment of the Henry's Fork.

It is important to note, however, that it protects these values without adding another layer of government management to this river, by allowing the river to retain its current ownership status with management responsibilities being shared by private property owners in the area, by local government entities, by the Forest Service, and by the State of Idaho.

In contrast to this approach, my colleague in the other body, Mr. Stallings, has introduced a bill which would authorize a Federal study of a segment of the Henry's Fork for its inclusion in the Wild and Scenic Rivers System. While I commend his intention to protect the current use of the river, I cannot support this proposal because I believe it will ultimately lead to unnecessary encroachments on the rights of Idaho citizens.

If one merely reviews the provisions of Public Law 95-42, formally the Wild and Scenic Rivers Act, and takes them at face value, one might not fully appreciate my objections to Congressman Stallings' approach. However, when you study the problems which arose in Idaho when other rivers were designated wild and scenic, then I think my objections take on a new and valuable light.

In short, Mr. Chairman, the danger lies in the historic liberal interpretation and implementation of the over-general provisions of this law. In order to substantiate this claim, I offer the following example.

Many of you already know that a certain segment of the Salmon River in Idaho has already been incorporated into the Wild and Scenic Rivers System. This designation was initially proposed by many of the local residents and the affected communities.

Prior to this designation, one universally recognized problem was the use or potential overuse of jetboats on the river. Most believed that this use should be regulated and believed that the designation would solve the problem. They were right, but unfortunately the solution proved to be worse than the problem.

Here, as in many cases of Federal intervention, the residents along the Salmon River experienced Federal regulatory overkill. Rather than making an attempt to determine what level of motorboat or jetboat use would be acceptable to everyone while simultaneously maintaining the integrity of the river, the Federal bureaucrats devised their own regulation independent of the needs and wishes of the affected parties.

In their infinite wisdom, the bureaucrats determined the number of jetboat trips that should be allowed on the river annually. They then looked at the number of people wishing to make such trips. Since there were more people than there were numbers of permissible trips, they decided to implement a lottery system.

Tourists, home and cabin owners, professional boating outfitters and others were given equal chance to win a boating pass. Unfortunately, some of the cabin owners could only access their cabins by boat or by packing in. I have been informed that this made no difference to the Federal Government.

If the cabin owner did not win permission to use their boats, they would have to pack in or wait until the following year and hope for a better roll of the lottery system.

Mr. Chairman, such management in my opinion is unacceptable and it is clearly unacceptable to the citizens of that area. Unfortunately, because of the powers bestowed on the Federal Government by the Wild and Scenic Rivers Act, short of another Act of Congress we are powerless to change this regulatory process.

In retrospect, I am sure that many of the residents who formerly supported the Wild and Scenic designations would oppose it if they were given another chance, now that they know the results of the process. Not surprisingly, they would probably prefer to meet and work out their own problems and disagreements at a local level and with the Federal agencies at that level.

If their resulting decision proved to be unworkable, they could simply meet to develop a new one. Now they are left with no choice at all.

In contrast to this hopeless situation, Mr. Chairman, I have one other exampie I would like to relate concerning the successful resolution of a problem through the cooperation of the State, local, and private managers. This success story pertains to the managers of the very segment of the Henry's Fork that will be affected by your legislation.

A conflict was discovered recently between those representing fishing interests and those who graze cattle on the land adjacent to the river. Apparently certain segments of the bank were susceptible to crumbling or erosion into the river under the weight of cattle or cattle use, cattle drinking in the river.

The fishery group were concerned that the increased sedimentation would damage fish production. A coalition of local groups, state agencies, landowners, and conversation-oriented people met and worked out a mutually acceptable solution.

Believe it or not, a solar-powered electric fence was constructed in an area were cattle grazed to contain the unstable banks. The solution actually allows for an increase in both the number of cattle grazing without hurting the environment and an increase in fish production.

The solution had the happy consequence of preserving both the rights of the parties involved as well as the integrity of the river. This solution would have been highly improbable were the river a component of the Wild and Scenic Rivers System.

In summary, Mr. Chairman, I view the enactment of S. 2635 as a measure that would help to protect Idaho's rights. I am afraid that many who work on the Federal and even State level often forget the rights of individuals and jump at the possibility of a Federal solution to a local problem. In most cases, I believe that a local solution would be equally or oftentimes much more acceptable, and clearly more efficient.

Unfortunately, as my example demonstrates, the Federal solution, particularly as pertains to the natural resource management, so often tramples on one of the most fundamental rights, the rights of those who own property in a federally controlled State.

It is imperative that we not employ the solution recommended by Mr. Stallings, that would probably result in the unnecessary infringement upon this right through the forced sale of scenic easements and other condemnations of private property.

We have an effective alternative, and that is your bill, S. 2635. And I have introduced companion legislation in the House, which is H.R. 5190. S. 2635 and 5190 resolve the only threat that cannot be managed on the local and the State level and provide us with an opportunity to continue the 100-year history of effective and successful stewardship of the Henry's Fork.

Wise Idahoans have learned from experience that it is best to ask for the least help necessary from the Federal Government, and for this reason I support your legislation and will work for support of my legislation, and certainly oppose inclusion of the Henry's Fork into the Wild and Scenic Rivers System.

I thank you, Mr. Chairman, for your consideration, and I hope your successful in moving this valuable legislation through the Senate.

[The prepared statement of Mr. Craig follows:]

AUGUST 11, 1986

TESTIMONY OF CONGRESSMAN LARRY E. CRAIG IN SUPPORT OF S. 2635 AT THE HEARING CONDUCTED BY THE SUBCOMMITTEE ON WATER AND POWER

MR. CHAIRMAN:

I AM PLEASED TO COME BEFORE YOU TODAY TO TESTIFY IN SUPPORT OF S. 2635, A BILL TO PROTECT THE INTEGRITY AND QUALITY OF CERTAIN SEGMENTS OF THE HENRY'S FORK OF THE SNAKE RIVER IN IDAHO.

THE HENRY'S FORK HAS AN INTERNATIONAL REPUTATION AS ONE OF THE BEST FISHING STREAMS IN THE UNITED STATES. TRUMPETER SWANS WINTER ON THE RIVER AT HARRIMAN STATE PARK, AND IT IS NOT UNUSUAL TO SEE BALD EAGLES WHEN VISITING THIS SEGMENT OF THE RIVER. NOT ONLY IS THIS AREA POPULAR AMONG FISHERMEN, IT HAS BECOME INCREASINGLY POPULAR AMONG ALL RECREATIONALISTS. IN 1985, OVER 1500 PEOPLE FLOATED THIS SECTION OF THE RIVER.

THE HENRY'S FORK OF THE SNAKE RIVER ACTUALLY HAS TWO ORIGINS. OFFICIALLY THE RIVER BEGINS AT THE OUTLET OF HENRY'S LAKE. HOWEVER, A SIGNIFICANT TRIBUTARY OF THE RIVER BEGINS AT BIG SPRINGS, A NATURAL WONDER IN ITSELF. AT BIG SPRINGS, CRYSTAL CLEAR WATER, ALWAYS AT 58 DEGREES FAHRENHEIT DESPITE ATMOSPHERIC TEMPERATURES, GUSHES FROM SEVERAL SPRINGS AT THE BASE OF A LOW TREE-COVERED HILL. GIGANTIC RAINBOW TROUT PATROL THE QUIET WATERS BELOW THE

BRIDGE AT THE SPRINGS, WAITING FOR FOOD TO BE TOSSED INTO THE WATER BY VISITORS. IN CONTRAST TO THE TRANQUILITY OF THE BIG SPRINGS AND THE ASSOCIATED BROAD, SHALLOW, SLOW MOVING RIVER WITH ITS SCENIC MARSHES, MEADOWS AND MOOSE, IS THE HENRY'S FORK CANYON. HERE, THE RIVER HAS ENTRENCHED ITSELF INTO A WELL DEFINED CANYON. TREE-COVERED SLOPES ARE STEEP AND RUGGED. TWO SPECTACULAR WATERFALLS OCCUR IN THE CANYON. UPPER MESA FALLS IS 106 FEET HIGH AND CASCADES IN A SINGLE SHEET OVER THE VERTICAL ROCK FACE. LOWER MESA FALLS IS 70 FEET HIGH AND MULTI-LEVELED. THE RIVER FUNNELS INTO A NARROW CHANNEL AS IT CHURNS AND BOILS DOWN THE TERRACED CHUTE TO THE RIVER BELOW.

MR. CHAIRMAN, I PROVIDE THIS DISCRIPTION BECAUSE I THINK IT ILLUSTRATES WHY WE ARE IN UNANIMOUS AGREEMENT THAT THE UNIQUE PROPERTIES OF THIS SEGMENT OF THE HENRY'S FORK SHOULD BE PROTECTED, AND ITS CURRENT USES -- FISHING, FLOAT BOATING, CAMPING AND SIGHTSEEING -- PRESERVED. UNFORTUNATELY, THERE SEEMS TO BE A DIFFERENCE IN OPINION ON HOW TO BEST ACCOMPLISH THIS WORTHY GOAL.

AFTER CAREFUL STUDY OF THE AVAILABLE ALTERNATIVES, I BECAME CONVINCED THAT THE APPROACH ADOPTED IN S. 2635 OFFERED THE BEST SOLUTION. IN DISCUSSIONS I AND MY STAFF HAVE HAD WITH RESIDENTS OF IDAHO, IT BECAME CLEAR TO ME THAT THE IMPETUS BEHIND THEIR PUSH FOR FEDERALLY LEGISLATED PROTECTION WAS THEIR DESIRE TO PREVENT FUTURE HYDROELECTRIC DEVELOPMENT ON THIS SEGMENT OF THE RIVER.

IN 1981, THE FIRST OF NUMEROUS HYDROPOWER PROJECTS WAS PROPOSED ON THE HENRY'S FORK. THIS AND THE FOLLOWING PROPOSALS GENERATED MUCH PUBLIC INTEREST, SINCE INHERENT IN DEVELOPMENT OF THE RIVER IS THE POTENTIAL FOR DIMINISHING THOSE VALUES WHICH MAKE THE HENRY'S FORK SO HIGHLY PRIZED BY AREA RESIDENTS.

S. 2635 EFFECTIVELY ELIMINATES THE POSSIBILITY OF FUTURE HYDRO DEVELOPMENT BY PROHIBITING THE FEDERAL ENERGY REGULATORY AGENCY FROM LICENSING FUTURE HYDROELECTRIC PROJECTS (WITH ONE EXCEPTION) ON A SPECIFIED SEGMENT OF THE HENRY'S FORK. IT IS IMPORTANT TO NOTE, HOWEVER, THAT IT PROTECTS THESE VALUES **WITHOUT ADDING ANOTHER LAYER OF GOVERNMENT MANAGEMENT TO THIS RIVER,** BY ALLOWING THE RIVER TO RETAIN ITS CURRENT OWNERSHIP STATUS, WITH MANAGEMENT RESPONSIBILITIES BEING SHARED BY PRIVATE PROPERTY OWNERS IN THE AREA, BY LOCAL GOVERNMENT ENTITIES, BY THE FOREST SERVICE, AND BY THE STATE OF IDAHO.

IN CONTRAST TO THIS APPROACH, MR. STALLINGS HAS INTRODUCED A BILL WHICH WOULD AUTHORIZE A FEDERAL STUDY ON A SEGMENT OF THE HENRY'S FORK FOR ITS INCLUSION IN THE NATIONAL WILD AND SCENIC RIVER SYSTEM. WHILE I COMMEND HIS INTENTION TO PROTECT THE CURRENT USES OF THIS RIVER, I CANNOT SUPPORT THIS PROPOSAL BECAUSE I BELIEVE IT WILL ULTIMATELY LEAD TO UNNECESSARY ENCROACHMENTS ON THE RIGHTS OF IDAHO RESIDENTS.

IF ONE MERELY REVIEWS THE PROVISIONS OF PL 90-542 (FORMERLY THE WILD AND SCENIC RIVERS ACT) AND TAKES THEM AT FACE VALUE, ONE MIGHT NOT FULLY

APPRECIATE MY OBJECTIONS TO CONGRESSMAN STALLING'S APPROACH. HOWEVER, WHEN ONE STUDIES THE PROBLEMS WHICH AROSE IN IDAHO WHEN OTHER RIVERS WERE DESIGNATED WILD AND SCENIC, MY OBJECTIONS TAKE ON A NEW LIGHT. IN SHORT, MR. CHAIRMAN, THE DANGER LIES IN THE HISTORICALLY LIBERAL INTERPRETATION AND IMPLEMENTATION OF THE OVER GENERAL PROVISIONS OF THIS LAW.

IN ORDER TO SUBSTANTIATE THIS CLAIM I OFFER THE FOLLOWING EXAMPLE. MANY OF YOU ALREADY KNOW THAT A CERTAIN SEGMENT OF THE SALMON RIVER IN IDAHO HAS ALREADY BEEN INCORPORATED INTO THE WILD AND SCENIC RIVER SYSTEM. THIS DESIGNATION WAS INITIALLY SUPPORTED BY MANY OF THE LOCAL RESIDENTS AND AFFECTED COMMUNITIES. PRIOR TO THIS DESIGNATION, ONE UNIVERSALLY RECOGNIZED MANAGEMENT PROBLEM WAS THE USE OR POTENTIAL OVER-USE OF JET BOATS ON THIS RIVER. MOST BELIEVED THAT THIS USE SHOULD BE REGULATED AND BELIEVED THAT THE DESIGNATION WOULD SOLVE THIS PROBLEM. THEY WERE RIGHT -- BUT UNFORTUNATELY, THE SOLUTION PROVED TO BE WORSE THAN THE PROBLEM.

HERE, AS IN MANY CASES OF FEDERAL INTERVENTION, THE RESIDENTS ALONG THE SALMON RIVER EXPERIENCED FEDERAL REGULATORY OVER-KILL. RATHER THAN MAKING AN ATTEMPT TO DETERMINE WHAT LEVEL OF MOTORBOAT USE WOULD BE ACCEPTABLE TO EVERYONE WHILE SIMULTANEOUSLY MAINTAINING THE INTEGRITY OF THE RIVER, THE FEDERAL BUREAUCRATS DEVISED THEIR OWN REGULATION INDEPENDENT OF THE NEEDS AND WISHES OF THE AFFECTED PARTIES. IN THEIR "INFINITE WISDOM" THE BUREAUCRATS DETERMINED THE NUMBER OF MOTORBOAT TRIPS THAT SHOULD BE ALLOWED ON THE RIVER ANNUALLY. THEY THEN LOOKED AT THE NUMBER OF PEOPLE WISHING TO MAKE SUCH

TRIPS. SINCE THERE WHERE MORE PEOPLE THAN THE NUMBER OF "PERMISSIBLE" TRIPS, THEY DECIDED TO IMPLEMENT A LOTTERY SYSTEM. TOURISTS, HOME AND CABIN OWNERS, PROFESSIONAL BOATING OUTFITS AND OTHERS WERE GIVEN EQUAL CHANCES TO WIN A "BOATING PASS." UNFORTUNATELY, SOME OF THE CABIN OWNERS COULD ONLY ACCESS THEIR CABINS BY BOAT OR BY PACKING IN. I HAVE BEEN INFORMED THAT THIS MADE NO DIFFERENCE TO THE FEDERAL GOVERNMENT. IF THE CABIN OWNERS DIDN'T WIN PERMISSION TO USE THEIR BOATS THEY WOULD HAVE TO PACK IN OR WAIT UNTIL THE FOLLOWING YEAR AND HOPE FOR BETTER LUCK. MR. CHAIRMAN, SUCH MANAGEMENT IS UNACCEPTABLE! UNFORTUNATELY, BECAUSE OF THE POWERS BESTOWED ON THE FEDERAL GOVERNMENT BY THE WILD AND SCENIC RIVERS ACT, SHORT OF ANOTHER ACT OF CONGRESS, WE ARE POWERLESS TO CHANGE THIS REGULATION.

IN RETROSPECT, I AM SURE THAT MANY OF THE RESIDENTS WHO FORMERLY SUPPORTED THE WILD AND SCENIC DESIGNATION WOULD OPPOSE IT IF THEY WERE GIVEN ANOTHER CHANCE TO DECIDE. NOT SURPRISINGLY, THEY WOULD PROBABLY PREFER TO MEET AND WORK OUT THEIR PROBLEMS AND DISAGREEMENTS ON THE LOCAL LEVEL. IF THEIR RESULTING DECISION PROVED TO BE UNWORKABLE, THEY COULD SIMPLY MEET TO DEVELOP A NEW ONE. NOW THEY ARE LEFT WITHOUT A CHOICE.

IN CONTRAST TO THIS HOPELESS SITUATION, I HAVE ANOTHER EXAMPLE TO RELATE CONCERNING THE SUCCESSFUL RESOLUTION OF A PROBLEM THROUGH THE COOPERATION OF THE STATE, LOCAL AND PRIVATE MANAGERS. COINCIDENTALLY, THIS SUCCESS STORY PERTAINS TO THE MANAGERS OF THE VERY SEGMENT OF THE HENRY'S FORK AFFECTED BY THIS LEGISLATION.

A CONFLICT WAS DISCOVERED RECENTLY BETWEEN THOSE REPRESENTING FISHERY INTERESTS AND THOSE WHO GRAZE CATTLE ON LANDS ADJACENT TO THE RIVER. APPARENTLY, CERTAIN SEGMENTS OF THE BANK WERE SUSCEPTIBLE TO CRUMBLING INTO THE RIVER UNDER THE WEIGHT OF CATTLE. THE FISHERY GROUPS WERE CONCERNED THAT THE INCREASED SEDIMENT WOULD DAMAGE FISH PRODUCTION. A COALITION OF LOCAL GROUPS, STATE AGENCIES, LANDOWNERS AND CONSERVATION-ORIENTED PEOPLE MET AND WORKED OUT A MUTUALLY ACCEPTABLE SOLUTION. A SOLAR-POWERED ELECTRIC FENCE WAS CONSTRUCTED IN AREAS WHERE CATTLE GRAZED THAT CONTAINED UNSTABLE BANKS. THIS SOLUTION ACTUALLY ALLOWS FOR AN INCREASE IN BOTH THE NUMBER OF CATTLE THAT CAN BE GRAZED WITHOUT HURTING THE ENVIRONMENT AND AN INCREASE IN THE NUMBER OF FISH PRODUCED. THIS SOLUTION HAD THE HAPPY CONSEQUENCE OF PRESERVING BOTH THE RIGHTS OF THE PARTIES INVOLVED AS WELL AS THE INTEGRITY OF THIS RIVER. THIS SOLUTION WOULD HAVE BEEN HIGHLY IMPROBABLE WERE THE RIVER A COMPONENT OF THE WILD AND SCENIC RIVER SYSTEM.

IN SUMMARY, MR. CHAIRMAN, I VIEW THE ENACTMENT OF S. 2635 AS A MEASURE THAT WOULD HELP TO PROTECT IDAHOANS' RIGHTS. I AM AFRAID THAT MANY WHO WORK ON THE FEDERAL AND EVEN ON THE STATE LEVEL OFTEN FORGET ABOUT THE RIGHTS OF INDIVIDUALS, AND JUMP AT THE POSSIBILITY OF A FEDERAL SOLUTION TO A LOCAL PROBLEM. IN MOST CASES, I BELIEVE THAT A LOCAL SOLUTION WOULD BE EQUALLY OR EVEN MORE EFFECTIVE. UNFORTUNATELY, AS MY EXAMPLE DEMONSTRATES, THE FEDERAL SOLUTIONS -- PARTICULARLY AS PERTAINS TO NATURAL RESOURCE MANAGEMENT -- SO OFTEN TRAMPLE ON ONE OF OUR MOST FUNDAMENTAL RIGHTS: THE RIGHT TO OWN PROPERTY. IT IS IMPERATIVE THAT WE NOT EMPLOY A SOLUTION RECOMMENDED BY MR.

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STALLINGS THAT WOULD PROBABLY RESULT IN THE UNNECESSARY INFRINGEMENT OF THIS RIGHT THROUGH THE FORCED SALE OF SCENIC EASEMENTS, AND OR THE CONDEMNATION OF PRIVATE PROPERTY. WE HAVE AN EFFECTIVE ALTERNATIVE: S. 2635 AND H.R. 5190, THE COMPANION BILL WHICH I INTRODUCED IN THE HOUSE.

S. 2635 AND H.R. 5190 RESOLVE THE ONLY THREAT THAT CANNOT BE MANAGED ON THE LOCAL LEVEL AND GIVES IDAHOANS THE OPPORTUNITY TO CONTINUE THEIR 100 YEAR HISTORY OF EFFECTIVE AND SUCCESSFUL STEWARDSHIP. WISE IDAHOANS HAVE LEARNED FROM EXPERIENCE THAT IT IS BEST TO ASK FOR THE LEAST HELP NECESSARY FROM THE FEDERAL GOVERNMENT. FOR THIS REASON, I SUPPORT ENACTMENT OF S. 2365 AND H.R. 5190 AND OPPOSE INCLUSION OF THE HENRY'S FORK IN THE WILD AND SCENIC RIVER SYSTEM.

THANK YOU FOR YOUR CONSIDERATION. I APPRECIATE THE OPPORTUNITY TO EXPRESS MY VIEWS PUBLICLY ON THIS MOST IMPORTANT MATTER.

The CHAIRMAN. Thank you, Congressman.

We will next hear from our State's chief executive. It is a pleasure to welcome before us again a man who has appeared here before on other matters, the Honorable John Evans, Governor of the State of Idaho.

STATEMENT OF HON. JOHN V. EVANS, GOVERNOR, STATE OF IDAHO

Governor EVANS. Thank you very much, Mr. Chairman, Senator Johnston. It is a great pleasure to be able to be here today to present this testimony before the Subcommittee on Water and Power.

I am most pleased to be able to be here this morning to represent the people of the State of Idaho and give an Idaho State perspective of the issues surrounding the protection of the Henry's Fork of the Snake River. The bill before you today, Senate Bill 2635, in my opinion does not address the full extent of the issues involved on this river system.

Let me just provide you a little brief history of my efforts to protect Henry's Fork and why I have consistently supported House Bill 2569, Congressman Richard Stalling's proposal for a comprehensive river study. This proposal was later incorporated into House Resolution 4350, the Omnibus River Bill.

Since 1976 the Idaho Department of Water Resources has, through the Idaho Water Plan, supported a state natural and recreational rivers system for Idaho. Because I believe Idaho should take the lead on water issues, I introduced a bill this year in the Idaho legislature to create such a system.

Because of its outstanding qualities, including a blue ribbon fly fishery, Henry's Fork was proposed for designation by the water resource board to be the first river segment in the system. Although the bill received bipartisan support and was supported by several organizations, including the Idaho Water Users Association, it failed to pass the committee before the session ended.

I believe two of our major stumbling blocks were: first, a lack of complete scientific documentation and thus a lack of broad public consensus on the array of values worth protecting on the Henry's Fork.

Second, it was recognized by the State that we could not legally prohibit hydropower development on the river because of the preemption authority vested in the Federal Energy Regulatory Commission. With this Federal override of a State designation a definite possibility, the State bill encouraged Wild and Scenic Rivers designation throughout the State-initiated process to gain some assurance that the hydroelectric proposals on Henry's Fork, excepting the upgrade at Island Park Dam, would be prohibited.

For this reason I compliment you, Mr. Chairman and Senator Symms and Congressman Craig, for all recognizing, as Congressman Stallings and I have, the immediate threat posed by the proposed hydroelectric projects on Henry's Fork. However, I believe that Senate bill 2635 fails to achieve the breadth of protection which likely will be needed on the river. My preferred approach is

a comprehensive study mandated by the Congress, whereby several goals could be accomplished:

First, a congressional study, unlike the U.S. Forest Service administrative study, would preclude hydropower development for up to 3 years during the study period. And if a favorable recommendation were received, an additional 3 years of protection would be allowed while awaiting legislative action on the recommendations of that study.

Second, a study would allow for greater public participation over the next several years than would an immediate hydropower prohibition. Issues such as the protection of the wildlife habitat, water rights and flows, water quality and streamside development can be fully addressed and publicly discussed through a study process.

Finally, action by the Congress on the study bill would lend the kind of national attention priority needed to resolve the protection of the Henry's Fork once and for all. Such clear direction is urgently needed as the Targhee National Forest proceeds with its administrative study of the Henry's Fork provided for in its final forest plan.

The Forest Service, as the manager of the majority of the lands adjacent to the 45 river miles under study, is committed to performing a quality assessment despite the decreasing fiscal resources at the forest level. I am pleased to report to you that the State of Idaho is well represented on the Forest Service interdisciplinary team overseeing the study, with the Idaho Departments of Fish and Game, Water Resources, and Parks and Recreation all involved.

Together, Forest Supervisor John Burns and I have floated the most scenic portions of the river, as you did, Mr. Chairman, and we agree that the program for river protection must involve Federal, State, and local entities if we are to be successful.

I suggest that this subcommittee recognize that the intent of the bill, to protect Henry's Fork from immediate hydropower development, is indeed a valid objective. I hope you share my view that this can best be accomplished through a Wild and Scenic Rivers study of Henry's Fork as passed by the House of Representatives. Such a study would finally address all of the important river values in the system.

I can assure the subcommittee that Henry's Fork of the Snake River merits the concern and attention of the U.S. Congress. The river, born just west of Yellowstone National Park border, provides outstanding habitat for the unique trout fisheries, a spectacular scenery for recreational boating, critical habitat for wintering of trumpeter swans, the clean and clear water flows upon which wildlife, fishermen, and the downstream farmers mutually depend upon.

If carefully analyzed and written, a study of this magnificent watershed way finally be put to rest and put to rest a number of issues that have festered over the years. I believe that with congressional action now and over the next several years, Henry's Fork of the Snake River can be well protected for the present and future generations.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Governor.

It would be disingenuous of me not to recognize that this is a political issue in the State of Idaho, and we are involved in a political campaign. I make that as a preamble, not because two of you are contestants who are seated at the table, but because I will ask unanimous consent at this point that the statement by Congressman Stallings be inserted in the record in full at this point, and that a statement by Mel Richardson, who is his Republican opponent in the election this fall, also be placed in the record at this point.

Without objection, so ordered.

[The statements referred to follow:]

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Washington, DC 20515

COMMITTEE ON AGRICULTURE
COMMITTEE ON SCIENCE AND TECHNOLOGY
SELECT COMMITTEE ON AGING

STATEMENT BY REP. RICHARD STALLINGS BEFORE THE SENATE SUBCOMMITTEE ON WATER AND POWER, AUGUST 11, 1986

Mr. Chairman, I want to commend you for calling this hearing today on S. 2635, the "Henry's Fork of the Snake River Protection Act of 1986." I am extremely pleased that you and Senator Symms have, through the introduction of this bill, joined me in this most important effort of protecting the Henry's Fork from the immediate threat of hydroelectric development.

I believe we are in total agreement that diverting water from the natural riverbed of this spectacular river to produce power makes absolutely no sense when there is already ample surplus power being produced in the Northwest. Accordingly, I support an immediate ban on hydro development on the river except at existing impoundments, and am confident that legislation which I introduced and has passed the House of Representatives would accomplish this goal.

It is also my belief that a congressionally mandated study as provided in H.R. 4350 goes an important step further than your proposed hydro ban. By law, a congressional study of the Henry's Fork would provide the same immediate protection from hydroelectric development and would extend this protection for up to six years to allow for adequate study and legislative review. Furthermore, this study would address a broader range of issues involved on the river and, even more importantly to me, would allow for broad public participation in this study process. It has been my personal goal from the time I introduced legislation last spring that we encourage greater public involvement in documenting the full spectrum of resource values and possible uses that may degrade the river, and in identifying proper management strategies.

I believe there is substantial local as well as national support for a wild and scenic river study of the Henry's Fork. This study is a responsible and dynamic process to protect the river from immediate threats, such as, but not limited to hydro development, and in ensuring that the river's scenic, recreational, fish, wildlife, geologic and historic values are not diminished. I think this study also recognizes the concern of many that we not become too complacent with the "status quo," but rather provide a rational framework for planning for the future of this magnificent resource.

It is my hope that you will also join me in support for this study. I must confess that it is unclear to me, at this point, as to your position on the "wild and scenic river" administrative study now underway by the Targhee National Forest. As you know, this study proposal was incorporated as a priority management directive in the Targhee's Land Management Plan and was further elevated by my study legislation. If it is your intention, Mr. Chairman, to support this hydro ban, in concert with a fully funded Forest Service study, then I would conclude that we are in basic agreement on these necessary first steps in protecting the Henry's Fork of the Snake River. I look forward to pursuing these mutual objectives with you, Governor Evans and Senator Symms.

Statement of Mel Richardson
before the Committee on Energy and Natural Resources
Subcommittee on Water and Power
August 11, 1986

Mr. Chairman. I am Mel Richardson, a longtime resident of Idaho Falls, Idaho and a longtime user of the Island Park area and the Henry's Fork of the Snake River. I am also the Republican Candidate for Congress in Idaho's Second Congressional District.

I appreciate the opportunity to testify on your legislation, S. 2635. This legislation, I believe, takes the proper course of preventing the Federal Energy Regulatory Commission from granting hydroelectric development on the Henry's Fork, while at the same time allowing the management of the Henry's Fork to remain, as it has until now, balanced between local, state, and federal governments.

The people of Idaho have two primary concerns over the future of the Henry's Fork. First, they want to protect the Henry's Fork from further hydroelectric development; specifically, to prevent further construction of dams or impoundments which would have an adverse effect on the outstanding qualities of this river. Second, they are concerned that other legislative proposals, which would designate the Henry's Fork as part of the Wild and Scenic Rivers system, would have the effect of taking management control of this river away from the people of Idaho, and place this river, and the adjacent corridor, under further control of the Federal Government.

Mr. Chairman, Congressman Stallings has taken the approach of more federal control in his legislation (H.R. 2569, now incorporated into H.R. 4350). Unfortunately, this has already passed the House of Representatives. I fear his approach will, if enacted, have the consequence of locking up the Henry's Fork from the very recreationists who are now most vocal in wanting to prevent further hydroelectric development. I'm afraid that in the concern to prevent proposed dams on the river, some are overreacting -- as is Congressman Stallings -- in the belief that federal control over the river is the only way to ensure its protection.

Turning the management of this area over to the federal bureaucracy, with all of the restrictions that eventually come with a Wild and Scenic River designation, is indeed a strange position for anyone, particularly someone claiming to represent the people of Idaho. We are the ones who live and use the

recreational opportunities in this area, and we have a far greater understanding of the river.

On the other hand, Mr. Chairman, your legislation meets the immediate threat, while protecting the rights of Idahoans to have as much influence as possible in the future management of the Henry's Fork.

Additionally, your legislation provides that one electric generating project, that of the Fall River Rural Electric Cooperative at Island Park Dam, could be allowed to proceed, but only under very strict environmental controls. I agree with this exception to the general hydroelectric ban. The developers of this project have told me they can construct an electric generating facility at the existing dam site that will not affect water quality. I take them at their word, and S. 2635 will make sure that they keep their promise.

Development of this project, while not denigrating the environmental quality of the Henry's Fork, will be of benefit to area residents and ratepayers of the Fall River Coop. The Island Park area frequently has brownouts during the summertime, and it receives power from Utah Power and Light during those months to meet peak demand. If the project meets FERC standards as well as those in your bill, it would greatly enhance the area's energy self-sufficiency. This is the type of quality, environmentally sound, and economically feasible development we should encourage.

I have been living in eastern Idaho for years, and have been traveling extensively through the region for many, many months now. I can say, with little chance of contradiction, that the overwhelming majority of residents along the Henry's Fork want to see future hydro development on the river stopped. But that overwhelming majority just as strongly does not want to see further federal control and restrictions of this river.

The cooperative management of various sections of the Henry's Fork has been, for the most part, successful until now. There is a wide mix of private, state and federal land ownership along the river. There are some relatively remote stretches of the Henry's Fork covered by this legislation. In other places, private cabins and public roadways exist along the banks. The entire Island Park area, through which Henry's Fork is the dominant feature, is widely used and enjoyed as an area for recreation. I believe this is and should continue to be the dominant use of the area for years to come.

As I just stated, management of the Henry's Fork, though varied, has been largely successful. Interest groups, such as the Henry's Fork Foundation, with local, state and federal help and cooperation, have been successful in allowing sportsmen access without undue environmental damage.

A significant portion of the river runs through Harriman State Park. The state, to its credit, has developed a portion of that park, creating good access to the river in an environmentally sound way. There is more to be accomplished to accomodate the growing number of people using the river and to protect the streambanks, but for the most part, present federal, state and local government management is proceeding smoothly. A fine example of that kind of cooperation can be seen in a solar-powered electric fence installed to keep cattle from grazing near the river's banks. A number of groups and agencies at all levels -- the Henry's Fork Foundation, the Idaho Park Foundation, the Forest Service and several others -- worked together to install this fence in an environmentally sound manner.

Mr. Chairman, I ask that you not upset that successful balance by placing Henry's Fork in Wild and Scenic River status. I urge you to proceed with approval of S. 2635 which I believe most Idahoans agree is the sensible solution. Further, S. 2635, with appropriate language, assures that our state water rights are protected, a right which absolutely must be guaranteed at all costs.

In conclusion let me say that I want the Henry's Fork to remain as it now is. I want my children to be able to enjoy this unique river. I want my children to be able to help make the important decisions about the management of this river well into the future. I don't want them locked out from the decision-making process -- helpless, while the management choices are being made for them in Washington, D.C.

I want, as much as possible, for Idahoans to make the decisions that will protect the Henry's Fork for generations to come. I want Idahoans to be in a position to work cooperatively with the federal government, and not be in the position of having to appeal to the federal government. And that, Mr. Chairman, is why I urge this subcommittee to move quickly and affirmatively on S. 2635.

Thank you very much for the opportunity to present this testimony before the subcommittee today.

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The CHAIRMAN. Senator Symms, you have indicated that you fully support the goals of protection of the river, is that correct?

Senator SYMMS. That is correct, Mr. Chairman.

The CHAIRMAN. I believe that each of you in turn has stated the same thing. I guess the concern that I have with the Wild and Scenic Rivers designation has been stated both by you and by Congressman Craig in terms of the conflict that we sometimes see on the Federal management with local objectives.

Governor, the concern that I have is I guess for 100 years we have more or less gotten along without any special management objective in terms of land management goals. The Idaho State Fish and Game Department has done a magnificent job of the protection and enhancement of that river segment. As a matter of fact, in talking to fishermen and guides in that area, they are unwavering and unstinting in their praise of the Idaho State Fish and Game Department that has recognized the opportunities for a premier trout fishery in that area, not by the usual method of rearing hatchery trout, releasing to be caught by the public and removed, the put and take kind of management, but have instead moved to a catch and release management.

The result has been over the last several years the growth of a natural fishery that is magnificent—a natural fishery, however, that they all are quick to assert is made even better by the water management that occurs as a result of the reservoir and the irrigation releases.

I think you would agree that that is correct, that that is the statement of the fisheries managers, is that not correct?

Governor EVANS. Certainly I would agree with that, that this has been enhanced as a result of the Island Park Dam being placed there. And it certainly has improved the quality of the fishery.

Of course, we do not remember what it was prior to that particular time. But the protection, the protection of the fishery as established by the Fish and Game Commission in the Department over the period of years, has been excellent.

The CHAIRMAN. Yes, we do not remember what it was like before that dam was there. But I think most of the fisheries' managers point to the irrigation releases from the Island Park Reservoir as one of the reasons why we have some of the conditions that exist there that are favorable to the wild trout populations.

And so it is not a question that man's activities are always adverse to the objectives that we seek. They sometimes are, many times are, but not always. That is one reason that I understand you to be supportive of the provision that is in our bill that permits the installation of a hydropower facility at Island Park Dam, if indeed it can be done without degradation of the fishery resource.

And I believe that you made a comment in your statement, but not a direct statement.

Governor EVANS. That is my position, Mr. Chairman.

The CHAIRMAN. The other two small hydro developments that are already there on that river or its tributaries are also not objectionable, as I understand it, either from your point or mine or from the people that are there at the present time; is that correct?

Governor EVANS. That is correct.

The CHAIRMAN. Congressman Craig, I believe that is your position as well?

Mr. CRAIG. Yes, it is, Mr. Chairman.

The CHAIRMAN. And Senator Symms?

Senator SYMMS. Yes, it is, Mr. Chairman.

Mr. Chairman, if I might say, what I am saying is—and I think I read where Congressman Craig said it and you have said it repeatedly—if it is not broke, do not fix it. And the river is protected and being managed very well now. And if we protect it from hydro development, there is no necessity to get the Government involved in it any further.

The CHAIRMAN. Well, that was my conclusion, of course, after being there and talking to the people that were involved, and having talked to a number of people with the Island Park Foundation, both personally and on the telephone or by letter.

The thing they seek protection against is the development of the hydropower projects along this stretch of the river. Most do not really see additional threat at this time. Some do. Some are afraid that there will be further development.

The concern I have is that when the Federal agencies go off in a different direction from that which local people support, it is oftentimes very difficult to turn that Federal agency.

Congressman Craig, you made reference to the conflict between jetboat and floatboat traffic on the main stem of the Salmon. Senator Church and I in crafting wilderness legislation through which that portion of the Wild and Scenic River runs wrote a specific provision that said current jetboat use of the river would be maintained. And in spite of that specific provision in the act, the Forest Service is acting to eliminate or to restrict or reduce jetboat traffic.

Mr. CRAIG. Well, Mr. Chairman, if I may, I remember the battle we had several years ago on the lower Salmon between Hell's Canyon Dam and Lewiston. A similar provision—excuse me, the lower Snake.

The CHAIRMAN. The lower Snake, into which the Salmon flows at that point.

Mr. CRAIG. Right; you had very clearly specified in legislation grandfathering of jetboats into that law. In fact, jetboats were there before floaters were, and there is a long history of mail transportation up and down that river, people transportation.

And yet, the Forest Service was bound to eliminate them. We finally, by basically clubbing them, convinced them otherwise, and they ought to read and adhere to the law.

And they were doing such unique things, Senator Johnston, Senator Bradley, as deciding that the current navigational posts that were put there along the river by the Federal Government that the boaters used to align their boats so they can safely run the rapids, were the wrong color. They were not, shall we say, scenically acceptable because they were bright.

Obviously, they were bright so you could spot them. They were going to paint them green so they could blend into the landscape, so that they would be esthetically acceptable to the floaters coming down the river. Well, we got that stopped, too.

But that is the absurdity oftentimes that we run into when we deal with a Federal agency who really has intent but to run their own purpose outside of what the law prescribes.

And what the law in this instance, which Senator McClure and the late Senator Church wrote, clearly said thou shalt, and in this case they were saying: Oh well, but in this case thou shalt not. Therein lies some of the real difference.

The CHAIRMAN. I do not mean to belabor that subject, but I know the Governor has run into some of that frustration, too, in dealing with the Federal agencies.

Governor EVANS. There is no question, those are the cases. What we envision here, Mr. Chairman and Senators, is that we can have some cooperative management under the Wild and Scenic Rivers Study Program and the recommendation that would come out of that particular study.

My emphasis here today is that you are very narrowly directing your legislation here to prohibit hydropower development, and it is not the only thing that is in danger there. The fishery is in danger, the swan habitat, the osprey, and on and on and on.

All of those wildlife activities are all in danger from man. The pressures there are very heavy. It is growing every year. Our Department, our guides service, has now had to limit the guides traffic down the river already. So it is there.

And you cannot just put your head in the sand and expect all of these other values to be protected because we are hidden out there by Yellowstone National Park. It is just the opposite.

We have a rush, a rush of people from all across the country and around the world, to utilize this particular resource, because it is so valuable. And we have got Harriman State Park there that we need to recognize and protect.

Well, let us look at those other values, and that is what a comprehensive study really would provide us to have, is to have us look at all of the different uses—water quality, overgrazing, streamside developments. All of those issues need to be taken into consideration in addition to—in addition to the issue of hydropower development.

The CHAIRMAN. I suppose, Governor, we can debate that without resolving it.

Would you suggest that, because Congressman Stallings' bill has fewer miles both above and below—we went farther upstream and farther downstream in our bill, thus limiting the amount of private land; his bill covers less of the nonpublic lands.

Would you suggest that the bill be cut back to the length described in Congressman Stallings' bill?

Governor EVANS. Your bill is appropriate as far as the distance on the river that it covers.

The CHAIRMAN. Although it does increase the conflict on management with respect to private lands?

Governor EVANS. Yes, it does, and that is essentially why the Congressman, as I understand it, limited the number of miles in his particular study to those areas that, of course, are public primarily. Almost 70 percent is controlled by the Forest Service, a substantial amount by the State, and very little private land is involved. And that is why that designation is important.

The CHAIRMAN. What was first known as the Central Idaho Wilderness Area and is now the Frank Church Wilderness Area encompasses a number of back country airstrips. I believe the position of the State government has always been, as expressed through the Department of Aeronautics, those back country airstrips should be maintained.

Am I correct?

Governor EVANS. I hope you will be able to do that.

The CHAIRMAN. Well, I hope so, too. We wrote a specific provision in the bill that says that they will be, and the Forest Service is trying to close some of them. And if we run into that kind of a conflict between the State and Federal Government, where we write in a specific provision that says to the Federal Government you shall not do that and the Federal Government moves right ahead in the face of such a specific prohibition and attempts to take that action, why would you be anxious to give them more authority over more land?

Governor EVANS. Let me emphasize, Senator, that what we are trying to do is make a study, a comprehensive study of the river, to identify all of those values and then come up with a plan, and hopefully a cooperative plan, placing the State in substantial control.

There is some of that river system, of course, that is all privately owned. Maybe we would not want any control, any management of that private land. That is what this study is all about, and that is why I think you are missing on this particular bill, just to think in terms of one area that should be prohibited.

Let us look at it all, and that is the emphasis of what Congressman Stallings and I are projecting and asking you to do.

The CHAIRMAN. I think you agree that the Congressman's bill and our bill accomplishes one immediate objective, and that is the prohibition of the issuance of hydropower licenses.

Governor EVANS. Absolutely, and we agree and support that.

The CHAIRMAN. And our bill does so permanantly. The study only does it until the completion of the study.

Governor EVANS. That is right.

The CHAIRMAN. And second, I guess I am ready to make one decision, and that is that I am already willing to say I do not want the Federal Government managing the private lands. And you are saying, maybe I do.

Governor EVANS. I am not saying maybe I do. I am saying let us study, let us study it very carefully. You are interpreting what my statement is.

The CHAIRMAN. Well, I do not mean to misinterpret it.

Governor EVANS. Well, let us do not misinterpret it. Let us make sure that we look at all of the aspects of it here, Senator. And that is the emphasis that I want to make, because it is a very complicated river system that needs to be studied.

The CHAIRMAN. Some people are advocating the removal of some of the cabins that are along the river now. Are you in favor of removing the cabins that are there now?

Governor EVANS. I hope that we do not have to remove the cabins themselves along the river, and I would not advocate that at all.

The CHAIRMAN. But that is a possibility?

Governor EVANS. I would not suggest it. I think that is what the study is trying to do.

The CHAIRMAN. To do what?

Governor EVANS. To study all of the different qualities of the river system and determine what is best to maintain the quality of the system and try to maintain—what the people of Idaho emphasized, and I agree, they want to have the status quo.

That status quo is not going to happen. It is a head in the sand attitude toward the river system. The pressures are very great on it. And so I am saying, well, let us look at it carefully all the way down the stretch. Let us study it.

If we pass that study proposal, then for 3 years that would prohibit any hydropower development. If we turn around and pass yours and then turn around and initiate a comprehensive study of the river, too, under the Wild and Scenic Rivers System, then that also would satisfy us.

And I just do not think you are going far enough when you say this is the extent of the needs of the river system today, because it is not. We have got all of these other values that we do not want to lose.

Senator SYMMS. Mr. Chairman, could I comment on a point?

I just wanted to say, Governor, the bill, the Stallings bill, says to amend the Wild and Scenic Rivers Act to designate a segment of the Henry's Fork in the State of Idaho for potential addition to the National Wild and Scenic Rivers System, to study it for that purpose.

So I think, you know, you cannot have it both ways here. Either you want to put it into Federal control or you do not. And I think that the Stallings bill is toward getting it under Federal control. And after all the experience we have had, I just cannot imagine how you could want to do that.

Governor EVANS. Senator, I am suggesting the possibility—and Mr. Chairman, I get back to the same thing. Why are you objecting to a study of a system? I cannot believe I am coming back to Washington, DC, and saying, let us look at that beautiful river system and study it. That is the value of what we are doing here, and then let us determine the kind of—I want State control.

I want local control. I want a coordinated and cooperative effort along those lines to get that done. That is what a study would provide. It is not necessarily going to put it into Wild and Scenic Rivers System, but we can examine that possibility along with an array of all of the other systems involved.

Senator SYMMS. The purpose of the bill is to study it to put it in the system. That is what it says. I am just saying what the bill says.

The CHAIRMAN. Congressman Craig.

Mr. CRAIG. Mr. Chairman, the Henry's Fork is not in my congressional district, but in response to the legislation that you introduced, S. 2635, as I mentioned in my testimony, I and my staff examined it very closely. And one of the analyses we did in looking at the Stallings bill, which is a study for inclusion and the bill clearly specifies that, you have to establish a basis for inclusion into this system, and that is exactly what the legislation provides for.

One of the concerns we had and I had in examining it, in adding that extra layer of bureaucracy to something that, if it became Wild and Scenic, then the Governor's intent of local control goes out the window, because you do not have local control at that point.

I examined the Endangered Species Act as related to the species that are endangered along the river, and they are adequately protected by that. I looked at the land use planning process that the Targhee currently is involved in, and it does have stream bank and riparian consideration in it and that is a valuable part of the study that is currently going on in those segments of the river.

We looked at potential water quality degradation as results from cabin site along the river. That can be handled by the Idaho Department of Water Resources by mandating sewer systems for those cottages, and that can be done.

The CHAIRMAN. I think it is being done, as a matter of fact, through the Idaho Department of Health.

Mr. CRAIG. So what I found on balance, Mr. Chairman, in examining those additional threats that our chief executive of the State speaks of is that they can be addressed comprehensively by laws that are currently on the books.

The question is a management system, if you will, for the entirety of the river. And I would suggest that it is not spoken to in your legislation, in my companion legislation, certainly not spoken to other than a Federal approach in the Stallings legislation, is to do what other States have done in developing a commission or in developing a use of their current water resources structure or their board, to develop a consortium so that local control and local impetus into the management systems on that river can be utilized.

That can be done and that keeps it out of the Feds' hands. And that can incorporate the Forest Service, that can incorporate the BLM if there is BLM adjacent properties. It certainly can incorporate the State, the State Department of Lands, because the State Department of Lands has land authority along the river.

And it can add an important inclusion that I mention in the latter part of my testimony that I think is absolutely critical to the totality of the river stretch that we address, much more extensive than the Wild and Scenic approach, and that is the private entity, the private shore owner.

That private landowner can be incorporated into a State system of management. But that private landowner cannot or never has been incorporated into a Federal system of management. Therein lies the critical difference between the approaches we are discussing.

The power resides in the State of Idaho today to fashion a combined commission or resource management system for that river, that incorporates the Federal, the State, and the local entities into a comprehensive approach guided by State law, guided by current Federal law, that mandates the planning process, that mandates protection of endangered species.

All that can be done. If we designate the Henry's Fork as wild and scenic, all of that by the very nature of the Federal law would go out the window. And therein I think lies the real difference.

The CHAIRMAN. Let me also add one other factor before yielding, and I think it is important to note and to commend you, Congressman. There was a threat or a problem with respect to protection at Mesa Falls because of the ownership of a private parcel of land at Mesa Falls.

The Forest Service, I think with all of our commendation, was moving toward an exchange that would move that land into Forest Service ownership, and they ran into a problem. And it required a legislative fix.

I commend you for having gotten that provision added to the House bill so that that land exchange can go forward and add another measure of assurance that that private parcel of land at Mesa Falls will not lead to any adverse development that will impair the qualify of what is really an important public resource that each of us in our own way is seeking to protect.

Senator SYMMS. Mr. Chairman, I would just like to clarify the record here. I have the committee report from March 20, 1986, out of the House Committee on Interior and Insular Affairs, and here is what it says the proposal does. It says:

> The segment of Henry's Fork River from Island Park Dam downstream to the confluence with Warm River and the segment from Big Springs downstream to Island Park Reservoir would be studied for possible inclusion within the Wild and Scenic Rivers System.

Now, that is what the instructions are going to be for the purpose of study. They are either going to recommend to put it in or not. And I think that is why I oppose that part of the bill.

The CHAIRMAN. Senator Bradley.

Senator BRADLEY. Mr. Chairman, I just wanted to say that as I listened to the discussion here, it occurs to me that you all might want to take a look at the Pinelands National Preserve legislation. It works quite well in New Jersey. It has Federal, State, and local cooperation in management of land. I just suggest that for you.

The CHAIRMAN. I appreciate the suggestion, and certainly there are some parallels as well as some distinctions.

Do you have any questions, Senator Johnston?

Senator JOHNSTON. Yes.

Congressman Craig, Congressman Stallings' bill would not add this to the Wild and Scenic Rivers System, am I correct?

Mr. CRAIG. As you heard Senator Symms read from the record, the purpose of a study for possible designation is that the study is directed to the intent of the legislation, which is Wild and Scenic Rivers.

Senator JOHNSTON. The question is, does it add the river to the Wild and Scenic Rivers System?

Mr. CRAIG. It does not. It evaluates the river system to see if it meets the standard for Wild and Scenic, and the report is charged with that responsibility.

Senator JOHNSTON. In the process of making this study, would they evaluate all of these values that we have spoken of, water quality, overgrazing, et cetera?

Mr. CRAIG. It is my understanding that the totality of the system, not only the water quality and the integrity of the in-stream situation, but those environmental situations adjoining it

that are contributing to or taking from the quality of the river for wild and scenic, would be evaluated.

So yes, Senator, I have to think that grazing, stream bank integrity, are all part and parcel of consideration. It is one of the reasons why when wild and scenic is arrived at there is an inclusion of recommendation for the Forest Service to acquire scenic easement, to begin to control the stream bank areas of a given system.

I think you are well aware that that happens on occasion. And frankly, this Congress has lagged way behind in its ability or willingness to contribute money to pay for, oftentimes, easements that it acquires.

Senator JOHNSTON. Well, let me ask a few questions if I may, and then we will come back to those subjects. Is it true that there is some real pressure, development pressure along the river?

Mr. CRAIG. I think you best ask the Governor and Senators Symms and McClure. I have briefly visited the river, but not in the last 5 years. There is no question from what I read, from what I understand, and the conversations I have had with residents of the area by phone, Senator, that the traffic that the two Senators and the Governor speak of is clearly there, clearly evident, and growing.

Senator JOHNSTON. Now, if there is development pressure on this river, do we know the answers to all the questions about what we should do about water quality, about sewage control, about grazing control?

If you were running the State fish and game department, would you know the answer to the questions? Would you be able to tell them, "yes, prohibit sewage and prohibit additional septic tanks, or not permit grazing within so many feet of the river"? Do you know all those answers?

Mr. CRAIG. Senator, if I did not know all of those answers and I was the head of a State agency whose responsibility was to ensure the integrity of the river, I should not be the head of that State agency, absolutely.

Senator JOHNSTON. Is the answer that you do know or you do not know?

Mr. CRAIG. I said, if I were that person I would know the answer.

Senator JOHNSTON. Well, I am asking you, do you know the answer to the question?

Mr. CRAIG. Yes, I do know the answer, Senator.

Senator JOHNSTON. And what are those answers?

Mr. CRAIG. The answers are approached as they have been historically approached when we had stream bank degradation and riparian habitat degradation. We arrived at a compromise, and the compromise was to fence cattle away from that particular area where the resource was being damaged.

It did two things. It protected the resource and allowed the historic purpose of that land to continue.

Senator JOHNSTON. Where should fences be built along the river?

Mr. CRAIG. In the instance where the stream banks are being damaged. Now, as you oftentimes know——

Senator JOHNSTON. Do you know where that is?

Mr. CRAIG. Yes; you can see it visually. If you walk the stream banks or float the river, it becomes very obvious. It depends on the

angle of the slope, the type of soil involved, the erosiveness, if you are dealing with a sedimentary type soil, if you are dealing with heavy clays.

All of those are managed differently, and you do not arbitrarily lock cattle away from a river, as is oftentimes done.

Senator JOHNSTON. I understand that, and I understand how it can be done and that it should be done. But has it been done?

Mr. CRAIG. The plan that the Targhee is currently involved in will make those recommendation through their soil scientists, their hydrologists, all of the people who are involved in that kind of study.

Senator JOHNSTON. They will make——

Mr. CRAIG. It is my understanding that they will.

Senator JOHNSTON. Let us be fair. All of this has not been done at this point. It ought to be done by someone, and I think your argument is that it ought to be done by the State. Congressman Stallings' bill would have the study done by the Forest Service. Is that fair?

Mr. CRAIG. That is correct.

Senator JOHNSTON. But we both agree that it ought to be done?

Mr. CRAIG. Well, I am agreeing that there is a lot currently being done with the Targhee study: Idaho Department of Water works constantly, Idaho Fish and Game works constantly in the management of that river. They have recommendations. They constantly make recommendations.

I am saying that all segments of the river today are being looked at. Concern is being expressed, dependent upon where the pressure is, by the given agencies or by the private citizens involved.

The CHAIRMAN. If the Senator would yield, I think there is one other facet that has been addressed and is being addressed, and that is the impact of septic tanks and sewage in that area. And the Senator does not know it, but he is helping us beat that problem by appropriations that have been made for work that has been completed and one that is under way which addressed that problem.

And the Idaho Department of Health has been instrumentally important in making those studies, as have the Federal agencies. So the problem is being addressed.

And I thank the Senator from Louisiana for helping us.

Senator JOHNSTON. Well, I always help a Senator from Idaho, sometimes more than I think is necessary.

Mr. CRAIG. Oh, no, Senator. Keep it up.

Senator JOHNSTON. Mr. Chairman, to me this thing is fairly simple. I mean, you have got a river much of which is owned by the Federal Government and managed by the Forest Service, some is also managed by the State. You have an excellent State fish and game department and it is going to take a cooperative solution or solutions, and those solutions ought to be studied.

Now, the question to me is, why not have the Forest Service study it? After all, they have the experts. We are not talking about raiding the State treasury. They have the experts. The fact that we study this does not mean it gets to be included in the Wild and Scenic Rivers System. Somebody may have written a report there that says we ought to look at whether it should be wild and scenic.

We have a lot of studies that do not lead to wild and scenic designations.

But in the process, they catalog the values, they make suggestions, they state why it should or should not be wild and scenic, I think that would be useful information. It seems that way to me.

If you like, we could say in advance we will not necessarily make it wild and scenic. I do not favor wild and scenic for every river. In many instances, my own personal predilection is to have a joint management of these things. We have done that in other areas.

It also seems to me that we ought to adopt your provision providing a permanent FERC ban on hydroelectric. That seems to me to be a good provision.

The CHAIRMAN. The next witnesses after this panel will be the Forest Service and you can find out from them on the record what it is that they have already done. And I think you will find that a lot of the questions you have asked have already been answered.

So I think the record, when completed, will help guide us in the answer to the question that you pose.

Senator JOHNSTON. Well, I will leave this problem to you Idahoans.

The CHAIRMAN. I asked him a moment ago how he felt about stepping into the middle of an Idaho political fight.

Senator JOHNSTON. That is why I am leaving.

The CHAIRMAN. Gentlemen, thank you very much. Obviously, the differences are defined, as they are in the political debate in Idaho, and I think it is essential for this committee to be exposed to that political debate and the alternatives.

I do not think anybody approaching this desires bad things. I think the question is which is the better way of approaching it and getting the answers that we want. I appreciate the testimony of each of you three, and I appreciate the fact that Congressman Stallings submitted a statement for the record, as has Mel Richardson also with respect to the appropriate management.

Thank you.

Mr. CRAIG. Thank you, Mr. Chairman.

Governor EVANS. Thank you, Mr. Chairman.

[Subsequent to the hearing Mr. Craig submitted the following:]

LARRY E. CRAIG
1st District, Idaho

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS
SUBCOMMITTEES
MINING AND NATURAL RESOURCES
(RANKING MINORITY MEMBER)
ENERGY AND THE ENVIRONMENT
PUBLIC LANDS

COMMITTEE ON
GOVERNMENT OPERATIONS
SUBCOMMITTEE
COMMERCE, CONSUMER
AND MONETARY AFFAIRS
(RANKING MINORITY MEMBER)

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August 12, 1986

The Honorable James McClure
Chairman
Committee on Energy and Natural Resources
SD 358

Dear Mr. Chairman:

I respectfully request that you accept the enclosed letter as an addition to my testimony given on August 11, 1986 at the hearing on S. 2635 held by the Subcommittee on Power and Water.

I appreciate this opportunity to supplement my remarks and ask that it appear immediately following my oral testimony of August 11.

Thank you for your consideration.

Sincerely,

Larry E. Craig
Member of Congress

LEC/jp

enclosure

LARRY E. CRAIG
1st District, Idaho

COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

SUBCOMMITTEES
MINING AND NATURAL RESOURCES
(RANKING MINORITY MEMBER)
ENERGY AND THE ENVIRONMENT
PUBLIC LANDS

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August 12, 1986

The Honorable James McClure
Chairman
Committee on Energy and Natural Resources
SD 358

Dear Mr. Chairman:

While attending the August 11 hearing on S. 2635 held by the Subcommittee on Power and Water, I had the privilege of listening to the testimony given by the Honorable John Evans, Governor of Idaho. Unfortunately, some of his statements may have been unintentionally misleading and I would like to take this opportunity to set the record straight.

Mr. Chairman, in response to the concerns you, Senator Symms, and I expressed regarding the inadvisability of Federal control of the Henry's Fork resulting from a Wild and Scenic designation, Governor Evans repeatedly assured us that Congressman Stalling's bill **merely authorized a Federal study.** Governor Evans stated repeatedly that such a comprehensive study was essential to the area and that the decision whether to include this segment into the system could be made after the study was completed and "the facts were in." Although the Governor was correct that this designation would require a separate act of Congress, it is important to note that statistics indicate there is more of a correlation between the study and actual designation than Governor Evans acknowledged.

According to information provided to me by the Congressional Research Service, approximately **eighty percent** of the rivers that have been studied for inclusion into the Wild and Scenic River System have already been incorporated in this Federal system. Congress has yet to act on the findings of the majority of the remaining twenty percent. **It is extremely important to note that Congress has rejected for inclusion only a handful of the rivers which were the subject of these Congressionally mandated studies.**

Based on these statistics, I think it is safe to conclude that there is every chance that the Henry's Fork of the Snake River will be designated Wild and Scenic if Congressman Stalling's proposal becomes law. Therefore, it is clear that the real issue to be debated is **not** whether to conduct a study, but whether Idahoans are willing to give control of this valuable resource to the Federal government.

Thank you for your consideration.

Sincerely,

Larry E. Craig
Member of Congress

LEC/jp

The CHAIRMAN. Our next witness, Dale Robertson, Associate Chief of the Forest Service; Mr. Christopher Warner, general counsel from FERC. Gentlemen, if you would take your seats at the table.

I would also say that, Senator Symms, Congressman Craig, if you desire to join us up here—just looking around, it has become an all-Idaho show, and we might as well have it that way at this point.

Mr. CRAIG. Mr. Chairman, I have another hearing on the House side that I need to attend to.

The CHAIRMAN. We appreciate your testimony here. Thank you very much.

Mr. Robertson.

STATEMENT OF F. DALE ROBERTSON, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. ROBERTSON. Thank you, Mr. CHAIRMAN. I have a prepared statement and with your permission I would like to summarize my statement.

The CHAIRMAN. Your statement will appear in the record in full, and you are invited to summarize.

Mr. ROBERTSON. Thank you.

The Department of Agriculture does not object to the enactment of S. 2635. The affected portion of Henry's Fork runs about 61 miles from Henry's Lake to the backwaters of Ashton Reservoir. All but about 10 miles of this flows through the Targhee National Forest. In the forest plan and the environmental impact statement the Targhee National Forest analyzed characteristics for eligibility and recommended that the portion of the Henry's Fork within the forest boundary from Big Springs to Warm River be further studied for possible inclusion in the National Wild and Scenic Rivers System.

While we prefer to evaluate resource tradeoffs through the Wild and Scenic Rivers study process consistent with the forest plan, we do not object to the enactment of S. 2635 because it would protect the river from certain federally licensed hydroelectric projects, similar to section 7 of the Wild and Scenic Rivers Act.

As a congressionally designated Wild and Scenic study river, these prohibitions would be in effect for a period of up to 3 years after the study report is submitted to Congress. Rivers that are subsequently designated as National Wild and Scenic Rivers are permanently protected from hydroelectric projects.

While this is not the only protection afforded to rivers by the Wild and Scenic Rivers Act, S. 2635 would protect the Henry's Fork free-flowing characteristics and fisheries resources.

We appreciate this opportunity to make our views known and would be pleased to answer any questions you may have, Mr. Chairman.

[The prepared statement of Mr. Robertson follows:]

STATEMENT OF
F. DALE ROBERTSON, ASSOCIATE CHIEF
FOREST SERVICE
U. S. DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Water and Power
Committee on Energy and Natural Resources
United States Senate

On S. 2635, a bill "To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes.

August 11, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to have the opportunity to present the Department of Agriculture's views on S. 2635, a bill "To protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River, Idaho, and for other purposes."

The Department of Agriculture does not object to the enactment of S. 2635.

The effect of S. 2635 would be to prohibit the Federal Energy Regulatory Commission (FERC) from approving any hydroelectric project on the Henry's Fork of the Snake River including issuance of any further permits on projects under preliminary permits.

The bill would not affect the appropriation or reservation of water nor the jurisdiction over waters of the Henry's Fork. Neither would it change water rights or valid existing permits or licenses except for the prohibitions against granting FERC licenses and permits. However, the Commission would not be prohibited from acting on an application for license filed for the Island

Park Dam Hydropower project provided it does not significantly or permanently alter streamflow, habitat, water temperature and quality.

The affected portion of the Henry's Fork runs about 61 miles from Henry's Lake to the backwaters of Ashton Reservoir. All but about 10 miles flow through the Targhee National Forest. In the Forest Plan and Environmental Impact Statement, the Targhee National Forest analyzed characteristics of eligibility and recommended that the portion of the Henry's Fork within the Forest boundary from Big Springs to Warm River be further studied for possible inclusion in the National Wild and Scenic Rivers System. We have testified in the House in support of legislation to designate the Henry's Fork as a Wild and Scenic Study River. It is an outstanding stream for fly fishing for large rainbow trout. The river is prime habitat for eagles, osprey, swans, and other wildlife.

While we would prefer to evaluate resource tradeoffs through the Wild and Scenic Rivers study process, consistent with our Forest Plan, we do not object to the enactment of S. 2635, because it would protect the river from certain federally licensed hydroelectric projects similar to Section 7 of the Wild and Scenic Rivers Act. As a congressionally designated Wild and Scenic Study River, these prohibitions would be in effect for a period of up to 3 years after the study report is submitted to Congress. Rivers that are subsequently designated as National Wild and Scenic Rivers receive permanent hydroelectric project prohibitions. While this is not the only protection afforded to rivers by that Act, S. 2635 would protect the Henry's Fork's free flowing characteristics and fisheries resources.

We appreciate the opportunity to offer our views on H.R. 2635. I would be pleased to answer questions concerning our testimony.

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The CHAIRMAN. Thank you very much.

I believe you testified—your statement was, in this segment from Henry's Lake to the backwaters of the Ashton Dam Reservoir, all but about 10 miles is within the Forest Service boundaries. Now, that will also include some lands within the Forest Service boundaries that are privately owned, through which this segment passes, is that not correct?

Mr. ROBERTSON. That is correct. Within the national forest boundary, somewhere around 65 to 70 percent that would be federally owned, and the rest is State or private.

The CHAIRMAN. And I was going to make that second point, that part of that is Harriman State Park, which is a component of the State parks system and owned and managed by the State of Idaho.

Mr. ROBERTSON. Yes; I think for the full 61 miles, it comes out roughly about 50 percent Federal ownership and 20 percent State, and the balance of about 30 in private ownership.

The CHAIRMAN. Thank you very much. I appreciate your statement.

Mr. Warner.

STATEMENT OF CHRISTOPHER J. WARNER, ASSOCIATE GENERAL COUNSEL, LEGISLATION, REGULATION, AND CONGRESSIONAL AFFAIRS, FEDERAL ENERGY REGULATORY COMMISSION, ACCOMPANIED BY RICHARD T. HUNT, DIRECTOR, OFFICE OF HYDROPOWER LICENSING

Mr. WARNER. Mr. Chairman, thank you. I am accompanied by Mr. Richard Hunt, who is Director of our Office of Hydropower Licensing at the Commission.

I too have a prepared statement which I will submit for the record and then briefly summarize.

The CHAIRMAN. It will be placed in the record in full.

Mr. WARNER. Thank you, Mr. Chairman.

We appreciate this opportunity to appear before you to discuss S. 2635, a bill to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River in Idaho.

With one exception, the bill would prohibit the Federal Energy Regulatory Commission from taking any action other than denial on any application for a license, preliminary permit, or exemption, or any further action on an issued preliminary permit for hydroelectric projects on designated sections of the Henry's Fork.

The purpose and effect of S. 2635 are clear. It would prohibit totally any future hydroelectric development by anyone on the Henry's Fork or its tributaries within one-half mile of its confluence with the Henry's Fork from Henry's Lake to the backwaters of Ashton Reservoir.

The bill would preclude any authorized hydroelectric construction because it explicitly disallows issuance of any preliminary permit, license, or exemption from licensing. In addition, it would preclude unauthorized hydroelectric construction, because it does not exclude the waterway from the Commission's jurisdiction under the Federal Power Act and thus would leave intact the Commission's enforcement power to protect against unauthorized construction.

If this bill were enacted, additional legislation repealing or amending these provisions would be required before any future hydroelectric development on the designated reached of the site could be authorized.

Section 3 of S. 2635 states that the bill's prohibition on licensing shall not apply to an application for license for project number 2973, but that the license may be approved only if the FERC determines that certain changes in the physical properties and quality of the Henry's Fork will not occur as a result of the project.

The license application for project number 2973 has received public notice and Federal and State agencies and members of the public have provided comments on the proposed project. The Commission staff is continuing its processing of the license application.

Mr. Chairman, we would be happy to answer any questions you might have.

[The prepared statement of Mr. Warner follows:]

STATEMENT OF

CHRISTOPHER J. WARNER
ASSOCIATE GENERAL COUNSEL
LEGISLATION, REGULATION, AND CONGRESSIONAL AFFAIRS
OFFICE OF THE GENERAL COUNSEL
AND
RICHARD T. HUNT
DIRECTOR OF THE OFFICE OF HYDROPOWER LICENSING
FEDERAL ENERGY REGULATORY COMMISSION

BEFORE THE

SUBCOMMITTEEE ON WATER AND POWER

OF THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

AUGUST 11, 1986

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to appear before you to discuss S. 2635, a bill to protect the integrity and quality of certain reaches of the Henry's Fork of the Snake River in Idaho. With one exception, the bill would prohibit the Federal Energy Regulatory Commission from taking any action, other than denial on any application for a license, preliminary permit, or exemption, or any further action on an issued preliminary permit, for hydroelectric projects on designated sections of the Henry's Fork.

We are appearing before you as technical witnesses, and our comments are not intended to represent the views of the Commission.

S. 2635 does not create any problems of a technical nature for the Commission. It would appear to prohibit totally any future hydroelectric development by anyone on the Henry's Fork or its tributaries within one-half mile of its confluence with the Henry's Fork, from Henry's Lake to the backwaters of Ashton Reservoir. The bill would preclude any authorized hydroelectric construction because it explicitly disallows issuance of any preliminary permit, license, or exemption from licensing. In addition it would preclude unauthorized hydroelectric construction, since it does not exclude the waterway from the Commission's jurisdiction under the Federal Power Act, and thus would leave intact the Commission's enforcement power to protect against unauthorized construction. If this bill were enacted, additional legislation repealing or amending these provisions would be required before any future hydroelectric development on the designated reaches at the site could be authorized.

Enactment of S. 2635 would require certain administrative steps, since it would prohibit the Commission from taking any additional action on preliminary permits already issued for sites within the river sections designated in the bill. The Commission would have to inform the holders of existing preliminary permits who would be affected by the legislation that it would be unable to grant a license for their proposed projects if they chose to file a license application. After such notification, permit holders might elect to surrender their permits, but the

Commission would not require surrender. If, however, permit holders did not fulfill the requirements of their permits after being notified of the bill's provisions, the Commission could cancel those preliminary permits.

Section 3 of S. 2635 states that the bill's prohibition on licensing shall not apply to an application for license for Project No. 2973, but that the license may be approved only if the FERC determines that certain changes in the physical properties and quality of the Henry's Fork will not occur as a result of the project. The license application for Project No. 2973 has received public notice and Federal and state agencies and members of the public have provided comments on the proposed project. The Commission's staff is continuing its processing of the license application.

The attached chart shows pending applications and issued preliminary permits in the Henry's Fork basin, and how they would be affected by enactment of S. 2635.

HENRYS FORK BASIN
As of August 1, 1986

Filing Type	Project Number	Project Name	Applicant / Licensee	Stream / River	Potential In KW	Affected by Proposed Bill
I. APPLICATIONS FOR LICENSE:						
	2973	Island Park	Fall River Rural Elec. Coop.	Henrys Fk, Snake River	4,800	Exempt
	3991	Cross Cut Div	Energenics Systems, Inc.	Henrys Fk, Snake River	1,754	No 1/
II. APPLICATIONS FOR PRELIMINARY PERMITS:						
	9998	St. Anthony Canal	North Fork Power Partnership	St. Anthony Canal	800	No 1/
III. ISSUED PRELIMINARY PERMITS:						
	8516	Upper Teton	Energy Cap Inc.	Teton River	5,700	No 1/
	8750	Bitch Creek	Felt Associates	Bitch Cr, Teton River	350	No 1/
	9315	Sheep Falls	Sheep Falls Associates	Henrys Fk, Snake River	4,150	Yes
	9445	Warm River	Great Western Power & Light Co.	Warm R, Henrys Fk, Snake	4,500	
	9662	Henrys Fork I	Henrys Fork Conservationists I	Henrys Fk, Snake River	2,650	Yes
	9665	Henrys Fork II	Henrys Fork Conservationist II	Henrys Fk, Snake River	3,550	Yes
	9853	George 2	Arktech, Inc.	Henrys Fk, Snake River	3,098	Yes
	9885	Upper Falls River	Environmental Energy Company	Falls River	4,500	
	9890	Up & Lw Mesa Falls	Arktech, Inc.	Henrys Fk, Snake River	12,500	Yes

1/ These projects are located in the Henry's Fork River basin. However, they are not within the designated reaches where development is prohibited.

The CHAIRMAN. Thank you very much.

There is a small hydro project that has been on the Buffalo River at its confluence with the Henry's Fork, that provided electricity for Pond's Lodge for many years.

Mr. WARNER. Yes, sir.

The CHAIRMAN. This bill would not affect the operation of that lodge, but it might affect a relicense or reissuance, is that correct?

Mr. WARNER. That is correct, Mr. Chairman.

The CHAIRMAN. If it is our intention not to interfere with that existing one, it would require a change in language, is that correct?

Mr. WARNER. I think it would be a fairly simple technical change in the language to assure that result.

The CHAIRMAN. Mr. Robertson, you are conducting or have conducted a study of the Targhee National Forest in the development of the forest management plan, is that correct?

Mr. ROBERTSON. Yes, sir.

The CHAIRMAN. Is that forest management plan completed?

Mr. ROBERTSON. Yes, it is.

The CHAIRMAN. When you were looking at that forest management plan, did the Forest Service address such questions as grazing along the banks of the river?

Mr. ROBERTSON. Yes, we did.

The CHAIRMAN. Did you look at such things as the impact upon endangered or threatened species, such as the bald eagle?

Mr. ROBERTSON. Yes; we did.

The CHAIRMAN. Did you look at such things as habitat for the osprey?

Mr. ROBERTSON. Yes.

The CHAIRMAN. Are you prepared to tell this committee that the forest plan as developed by the Forest Service adequately addresses those questions?

Mr. ROBERTSON. Yes; I believe it does adequately address those questions, and the forest plan does talk about how the river corridor would be managed. It says that we will protect existing values, recreation and river values in the corridor, and it also recommends that we follow up with a Wild and Scenic Rivers study.

But the existing plan says we would not conduct any activities in that corridor that would interfere with later designation as a Wild and Scenic River.

The CHAIRMAN. Now, Wild and Scenic River has different components according to the nature of the land and the nature of the developments along the river.

Mr. ROBERTSON. Yes; there are three components: A wild river, a recreational river, and a scenic river.

The CHAIRMAN. And without prejudging that, there is some of this river that is certainly now eligible for wild river status and some portions of the river that would not be?

Mr. ROBERTSON. Yes. In fact, one of the objectives of making a study, if it is to be a Wild and Scenic River, is to designate it according to those three categories.

The CHAIRMAN. You have within the Targhee National Forest some special use permits that are outstanding at the present time?

Mr. ROBERTSON. Yes; there are several summer home areas within this area.

The CHAIRMAN. And some commercial establishments also?

Mr. ROBERTSON. Yes. I do not know to what extent they are on Federal lands or national forest lands.

The CHAIRMAN. Did you in your study of the Targhee National Forest management plan consider the presence of these special use permits, pretty largely summer cabin use?

Mr. ROBERTSON. Yes.

The CHAIRMAN. And did you find them inappropriate to the multiple use of those lands?

Mr. ROBERTSON. In general, we do not find it inappropriate in this particular area. There have been some situations where summer homes have been very close to the stream and some past decisions have been made that over time we should phase out a few of those summer homes. But in general, we find it compatible.

The CHAIRMAN. In some of those areas, you also found it appropriate to negotiate with the owners of the cabins, those who held special use permits, to move the cabins back further from the stream?

Mr. ROBERTSON. Yes.

The CHAIRMAN. And I believe the forest manager has stated that he thinks that that is an appropriate solution to the problem that existed with those few cabins.

Mr. ROBERTSON. Yes. In fact, we were very much involved in the Forest Service in getting those cabins there to start with, and we do not see summer homes as incompatible with management of the national forest in general. It is just on an exception basis where a summer home may cause a particular problem with streams or other high values in an area, but that is the exception.

The CHAIRMAN. And there was some problem with respect to the sewage that originates in the use of those summer homes, and is that problem being addressed in the management plan?

Mr. ROBERTSON. Mr. Chairman, I just do not have that kind of detailed knowledge of that plan. But it should have addressed that in terms of the future of summer homes in that area.

The CHAIRMAN. Would you supply for the record an answer to the specific question? Certainly we will make it part of the record when received.

Mr. ROBERTSON. Yes; I would be pleased to do that.

The CHAIRMAN. I made reference earlier in conjunction with Congressman Craig's action on the land exchange at Mesa Falls. Are you familiar with that particular exchange?

Mr. ROBERTSON. I am just familiar with it in general. I do know we have been working with Montana Power Co., who owned the land. I think a subsidiary, Sunlight Development Co., owned it, and we have been working with them, and earlier had signed an agreement to try to acquire that land.

I am not up to date on the latest situation.

The CHAIRMAN. Would you provide for the record both the current status of that land exchange and whether or not the provisions that Congressman Craig had added to a House bill would be sufficient to solve that problem?

Mr. ROBERTSON. Yes; I would be pleased to do that. It is a critical area and we feel we should try to acquire that as part of the national forest system.

[Subsequent to the hearing the Department of Agriculture submitted the following:]

United States Department of Agriculture | Forest Service | Washington Office | 12th & Independence SW P.O. Box 2417 Washington, DC 20013

Reply to 1510

Date AUG 20 1986

Honorable Frank H. Murkowski
Chairman, Subcommittee on Water
and Power
Committee on Energy and Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

At the August 11 hearing on S. 2635 concerning the Henry's Fork of the Snake River, Senator McClure asked us to provide answers to the following questions.

Question: How does the Targhee National Forest Plan address water quality issues related to sewage from recreation residences on the Henry's Fork?

Answer: The 1985 environmental impact statement for the Targhee National Forest Land Management Plan includes the following information. "Water quality data from Forest monitoring stations, U.S. Geological Survey water quality reports and a State of Idaho water quality status report describe water quality on the Forest as excellent. Localized water quality problems exist in the Island Park area. Studies completed on water quality in this area indicate that the problem is associated with human waste and inadequate treatment facilities." Discussions between the U.S. Environmental Protection Agency and local residents began in 1973 regarding the creation of a local improvement district to construct sewage treatment facilities. These facilities have been constructed in the Mack's Inn area and are planned in the Island Park and the Last Chance areas. Summer homes under special use permits on the Targhee National Forest also contribute to water quality degradation. To minimize this impact, we are reviewing sewage facilities as each home's permit comes up for renewal. We are cooperating with county and State efforts to alleviate water quality problems associated with human waste and inadequate treatment facilities along the Henry's Fork.

Question: What is the status of the land exchange along the Henry's Fork at Mesa Falls with Sunlight Development Corporation? Has the assistance Congressman Craig provided helped in completing the exchange?

Answer: Congressional oversight has been completed, and we anticipate that titles will be exchanged the week of September 8. In response to efforts of Congressman Craig and other House Members, the House Committee on Agriculture waived the remaining period for oversight. This has speeded the time for final transfer of the lands.

Sincerely,

R. MAX PETERSON
Chief

The CHAIRMAN. Well, I would hope to at some time. I know—well, maybe I should back up before I make this comment.

The Governor indicated in his statement—and I meant to make a comment on it—that the Forest Service has constrained fiscal resources. My own view of that has been that the Forest Service has fared fairly well in current budgets, particularly with respect to the kinds of things we are talking about here.

They may have had difficulty in getting enough money to do sales preparation and road building with respect to timber harvest, and they have certainly had difficulty getting enough money for investment in intensive recreation development or use.

But in the kinds of things we are talking about here—the protection, the development of the plans, the studies—have you been adequately funded in order to carry out your responsibilities in those regards?

Mr. ROBERTSON. As far as doing the studies?

The CHAIRMAN. Yes.

Mr. ROBERTSON. Yes.

The CHAIRMAN. And developing the management plans?

Mr. ROBERTSON. Yes; we have placed top priority on that in both forest planning and are now in the process of preparing a special study for this river corridor.

The CHAIRMAN. The reason I made that a preamble is that after viewing the river in its totality, there is one certainly, maybe two, things that I think we need to address, and maybe you do not have enough funding to address those at the present time.

One is the impact of the numbers of fishermen. There is an area where there are dozens and dozens and dozens of—I would say hundreds, but that may not be literally true, but I know it is literally true about dozens—of automobiles and campers of fishermen that come at the specific time of the major hatches on that river. And there are not enough facilities at that point to take care of the human impact upon the environment.

I suppose if they were willing to drive far enough away they might find more adequate facilities. But the nature of human beings in general and fishermen in particular is they want to be close to where the fishing is, and there are inadequate facilities there at the present time.

I think that is an acute need and it ought to move up the priority list, to get sanitary facilities and parking areas where it is necessary and appropriate.

The second, which is a longer range need and it certainly is not an urgent need in the sense of a degradation of a resource, as the other is, and that is better access for viewing Mesa Falls.

Mesa Falls is an incredible sight, and one of the reasons it is such a good view, very honestly, is because of the impoundment at Island Park Reservoir and the irrigation releases from that reservoir that have high volumes of water plunging over that magnificent falls during the period of the year when the tourists are traveling that section of the road on their way to and from Yellowstone National Park.

But the access for view is very limited, very difficult, and the result is that many millions of Americans that might want to see that outstanding feature, one that we are trying to preserve in our

legislation, are denied the opportunity to see because they cannot get there.

As I say, there is not an environmental problem in the sense of the degradation of the environment at the present time, except that the current access is probably overutilized, even though millions cannot get there. And I would think that an access point on the other side of the river near the highway, which would afford both a better view of the falls and better access to those who are traveling the highway, should be high on our list of future projects when our budget will sustain that project.

I note that because I am certain you do not have that on your screen at the present time, and I hope you will put it there and it will get there soon.

Mr. ROBERTSON. Well, thank you for that suggestion, Mr. Chairman. We will take a look at those two items.

The CHAIRMAN. The one is critical, I believe. This is described to me by fishermen, who have more time to be more serious about it than I am, and that is the only reason they are more serious.

This is one of the three best trout fly fishing streams in the world. I say that with some reluctance because, having said that publicly, now we will probably get too darn many fishermen there. But as a matter of fact, that word has already spread.

And during the major hatches that river is full of fishermen. The upper stretch of the river is wadable, that portion above Harriman State Park and immediately below it. And that, because it is wadable, the stream is literally full of fishermen.

A guide told me that one summer when he was keeping track of tags and they tagged a number of the large fish—it is a catch and release—that one 7½-pound trout was caught seven times in one summer. And he made the comment, which I think is appropriate. Can you imagine the value of that trout?

It is a very valuable trout. I would like to catch it myself. Well, it is still there, so I will have a chance. But because of that chance, the fishing action is almost indescribable during times of major hatch. And that is why that river is so unique.

It lies in the Island Park Caldera, which is the result of the collapse of an old volcanic action that would make Mount St. Helen's look puny. But because it is in that kind of a location, there is a tremendous volume of spring water that feeds and sustains the flow of that river and also maintains its temperature.

That is also why it is an important feature of the geography, an important asset with respect to wintering the trumpeter swan, because that, in spite of the fact that it is in an area of the country very high in elevation, very cold winters, everything else freezes up, this river does not freeze up.

It is open all winter. And that also means that it has developed an incredible variety and volume of the insects that breed in and hatch from that water environment. The result is that we have tremendous numbers of insects, remarkable fishery, and an impact from the people who come to enjoy that fishery opportunity.

That is happening now, and I do not want to see us even moving in the direction of restricting the numbers of fishermen so much as I want to manage that impact upon the other resources. And I can tell you, there are places there at certain times of the year that are

not as sanitary as they ought to be, simply because of the human reaction.

There is one other thing that ought to be high on the list and I hope you will note this. It is very small on the Forest Service screen, I know. You ought to do something about the road where the rafters and boaters take the boats out at Hatchery Ford.

Now, I know you do not have the time and that is a pity, but I would dare you to drive your car down there. And if you did, you ought to be removed from your job because of lack of judgment.

Mr. ROBERTSON. We will take a look at that, too, Mr. Chairman.

The CHAIRMAN. Senator Symms, do you have any questions?

Senator SYMMS. No questions, Mr. Chairman. I think you covered it adequately, and I compliment you for having this hearing this morning and thank you for doing so.

I sat here and listened to the exchange, and the thought keeps recurring to me as a native Idahoan that sometimes we are in a conflict. If this river somehow ever is classified as Wild and Scenic and it gets put on the national charts, it just invites the hordes of people to come to it, and then the fragility of the river becomes, I think, a serious management problem.

But from the standpoint of strong environmentalism, it is probably better off the way it is and it is being used all it can be used right now anyway.

The CHAIRMAN. This is an aside, and if I were burdening anybody besides the witnesses, who are paid to be burdened at hearings like this, I would not take the time to make the comment.

But many years ago I had an excellent backpack trip and the fishing where I had gone was very good, and when I came back I made some comment to the local hardware store man from whom I bought my flies of how good the fishing had been at that particular point.

It was less than 10 days later, people in my community were repeating back to me the advice that I ought to go there, and they used the exact words I had used in talking to this man in the store. I do not do that any more, and I am somewhat hesitant in saying how good the fishing is on the Henry's Fork.

I think the comment the Senator has made is right. The really most unique aspect of this stream is its fishery. Certainly it is scenic. It certainly has other values that are important. Many other streams have similar beauty and similar values, but this is unique in some regards.

I would agree with the Senator that designation of an area tends to attract greater numbers of people for other reasons. I think the fishermen already know it, the really serious fly fishermen. And you will see cars there from all over the United States and Canada. You meet people there from all over the world who come for the fishing. So that is not unknown now.

But we as Idahoans are a bit ambivalent about advertising our State too much, because if everybody in the United States knew how unique it was too many would want to live there. But we still have the door open for tourists and for others who appreciate the values of our State enough to come and live there. And I am sometimes pleased that my colleagues here are ignorant of our beauty

and our values, because it keeps them from moving there and running against us.

I guess a similar situation and also ambivalence in Idaho attitudes is evident in what happened to the Sawtooth National Recreation Area. Usage has dramatically increased in the White Cloud since the debate over the White Cloud started. And the very thing we were trying to protect has been degraded because of the debate and the usage.

And second, when the debate was going on there was a real argument in Idaho and a real difference of opinion as to whether that should be made a part of the National Park System. Many who loved the area the most wanted it protected by the recreation area designation and did not want the magnet of park designation because it would bring too many people.

And I think that ambivalence that was so evident there is characteristic of attitudes of Idahoans, because I do not think anyone can doubt that the Sawtooth National Recreation Area contains within its bounds scenery and resources that are of national park quality by any standard.

And I would say, after having been here for now nearly 20 years and participated in the greatest expansion of the park system in the history of this country, that the Sawtooth area really is superior to many, if not most, of the national parks that we have designated.

But it is that ambivalence of Idaho attitudes that has prevented it from becoming a part of the National Park System.

Gentlemen, thank you very much for your testimony. I appreciate it.

Mr. ROBERTSON. Thank you, Mr. Chairman.

The CHAIRMAN. We will now hear from Ms. Debbie Sease, Washington representative of the Sierra Club, and Mr. W. Kent Olson, president of the American Rivers Conservation Council.

We will first hear from the Sierra Club.

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB

Ms. SEASE. Thank you, Mr. Chairman.

My name is Debbie Sease. I am the Washington Representative of the Sierra Club. I am testifying today on behalf of both the Sierra Club and the Wilderness Society. I have turned in my written statement and I will briefly summarize.

The CHAIRMAN. Your written statement will appear in full in the record.

Ms. SEASE. Our members in Idaho, both Sierra Club and the Wilderness Society, share with thousands of other Idahoans and apparently with everyone who has had any experience of the Henry's Fork deep concern for that river, for its future management.

It is clear from testimony today that that river faces some serious threats. What is a pleasure today, particularly, is to be debating not whether or not, to protect the river but how to protect it.

In 1968, Congress established the Wild and Scenic Rivers Act, and it seems that they must have almost had the Henry's Fork in mind when they passed that Act. It is a river that epitomizes what

Congress wanted to preserve. It is a river that is of national significance.

As has been stated here, it is one of the three best fishing rivers in the country. So it deserves the absolute best protection that we can give it. The Sierra Club believes that the management prescriptions of the Wild and Scenic Rivers Act are best designed to give the full range of protection that that river deserves, and we think that it needs.

S. 2635 we believe is a very good, timely, important first step in the protection of the Henry's Fork. We urge that it not be Congress' final step in protecting the Henry's Fork, because there are other threats to the river, to its productivity: water diversion, siltation, channelization, overgrazing, streamside development.

These activities are not as imminent as hydro development and perhaps Congress has the time to study and debate further how to address those issues. But we hope that this is not the final step, because the river would suffer from those other things.

Our local members support study of the river for inclusion in the Wild and Scenic Rivers System, as has been proposed by Congressman Stallings' House legislation. We believe the Forest Service plan which is under way will ultimately point toward designation in the Wild and Scenic Rivers System because of the river's values and its need for protection.

If you as a sponsor of S. 2635 are not willing at this point to support study for the river, we hope that you revisit that issue after the forest recommendation has been completed.

There is one specific provision of the bill that I would like to address. It is section 4 (a) and (b). Section 4(a) asserts that the river—the hydro ban does not ceate a Federal reservation of water. We agree that it does not. We believe, since this does not establish a Federal reservation of land under existing law, it would not establish a Federal reservation of water.

Therefore we do not believe that section 4(a) is necessary. If it was needed, that could be addressed in the committee report, merely to restate the principle that, by not creating a Federal Reservation of land, the Federal reservation of water was neither implied nor inferred.

Section 4(b) is less clear. One possible interpretation of that section is that a Federal reservation of water on the Henry's Fork that might have been established by the reservation of the Targhee National Forest is negated by this act.

The Supreme Court recognized in *Cappaert* v. *United States* that a reservation of land brings with it an implication of reservation of water to the extent necessary for the purposes of the original reservation. To the extent that section 7(b) draws into question that original reservation, we would propose that that subsection be deleted.

We thank you for this opportunity to testify on S. 2635. We are most pleased that the Idaho delegation is taking steps to provide protection for the Henry's Fork. This hearing has already raised some questions in my mind that I believe will require a personal inspection to resolve.

[The prepared statement of Ms. Sease follows:]

SIERRA CLUB
330 Pennsylvania Avenue, S.E., Washington, D.C. 20003 (202) 547-1141

STATEMENT OF DEBBIE SEASE, WASHINGTON REPRESENTATIVE, SIERRA CLUB, ON BEHALF OF THE SIERRA CLUB AND THE WILDERNESS SOCIETY, BEFORE THE SUBCOMMITTEE ON WATER AND POWER, OF THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE, REGARDING S. 2635, ON AUGUST 11, 1986

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity to testify S. 2635 on behalf of the Sierra Club. My testimony today also reflects the views of The Wilderness Society. Together our organizations consist of more than 528,000 individuals concerned with the protection of our environment for the benefit of present and future generations.

Our members in Idaho and elsewhere share with thousands of other Idahoans a deep concern for the Henry's Fork and the unique natural resources that it contains. This river faces serious, imminent development threats. We are pleased that Congress is addressing those threats and seeking solutions.

The Henry's Fork is the epitome of what Congress set out to preserve in 1968 with the establishment of the Wild and Scenic Rivers System -- a river which possesses "outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historical [and] cultural ... values." It is our strong belief that the Henry's Fork should be formally included within that system. The management prescription of that Act will provide the best long term management of what is unquestionably a priceless natural resource.

S. 2635, by prohibiting hydroelectric development on approximately 50 miles of the Henry's Fork, takes an important first step in preserving this river. We strongly believe, however, that this should not be Congress' final action on the Henry's Fork. This measure would provide protection from one threat to the Henry's Fork. It does not address the issues of water diversion, siltation, channelization, overgrazing, and streamside development. These activities, while perhaps not as imminent as hydroelectric development on the Henry's Fork pose equally serious longterm threats to the productivity and natural values of the river.

Local conservationists have urged the Congress to designate the river as a study river under the Wild and Scenic Rivers Act. This action would fully protect the river in its current condition for six years while the river is studied and solutions to the above mentioned problems are found. The Targhee National Forest has already begun a review of the river as a part of its Forest Plan. Because of the river's outstanding values, the results of that review will almost certainly point toward inclusion of the Henry's Fork in the National Wild and Scenic Rivers System.

If the sponsors of S. 2635 are not willing at this time to take the additional step of formally designating the Henry's Fork as a study river, we urge them to revisit the question of Wild and Scenic River status for the river when the forest plan's more comprehensive analysis of the river's values and potential development conflicts is completed.

There is one specific provision of S. 2635 which I would like to bring to the Committee's attention. Section 4(a) asserts that the Act does not establish either an expressed or implied reservation of water. It is clear, since this Act affects only the granting of licenses and permits by the Federal Energy Regulatory Commission that it does not constitute a reservation of land, it therefore does not, under established law, create reserved rights. Thus, there is no need for this language.

It is unclear what is intended by the language of Section 4(b): "With respect to this Act, no other provision of any other Federal law shall be construed as authorizing the implied appropriation or reservation of water by any Federal agency." One possible interpretation of this language is that it is intended to negate any Federal reservation of water on the Henry's Fork that may arise, not from this Act, but from the original reservation of the Targhee National Forest. The Supreme Court has recognized that a Federal reservation of Federal public land inferred a reservation of waters to the extent necessary to fulfill the purposes of the reservation. Cappaert v. United States, 426 U.S. 128, 96 S.Ct. 2062, 48 L.ED.2d 523 (1976). Section 4(b), to the extent it draws into question existing federal reservations of water for the river, is not acceptable.

The Sierra Club and The Wilderness Society strongly suggest that Section 4 be deleted. This issue could be clarified in the Committee Report by including language stating the principle outlined above, that S. 2635 does not constitute a reservation of land, and therefore does not constitute an express or implied reservation of water.

Thank you for this opportunity to testify on S. 2635. We are most pleased that the Idaho delegation is taking steps to ensure preservation of the Henry's Fork and look forward to working with the delegation to expand and continue these efforts in the future.

The CHAIRMAN. It did in mine.
Ms. SEASE. To reinspect, right?
The CHAIRMAN. Thank you very much.
Mr. Olson.

STATEMENT OF W. KENT OLSON, PRESIDENT, AMERICAN RIVERS CONSERVATION COUNCIL

Mr. OLSON. Thank you, Senator McClure. Thank you for having me here.

I am Kent Olson, president of American Rivers Conservation Council here in Washington. We are the Nation's principal river-saving organization.

My testimony is before you and I will summarize, too, if that is all right.

The CHAIRMAN. The full statement will be placed in the record.

Mr. OLSON. Thank you, Mr. Chairman.

We are very much in support of your legislation, and we too hope that it will be the beginning of something that might perhaps be more comprehensive or at least be studied to be more comprehensive.

The trout fishery comment is that we think the section 3 of your proposed bill, 2635, perhaps should have a different language with regard to the retrofitting of the Island Park Dam, and specifically we are recommending that you consider the deletions to lines 14 through 17 in favor of something that perhaps is a more strong wording, and this is the wording that we would recommend:

> Provided that such license will be denied if FERC determines that any significant alterations of stream flow, habitat, water temperature, water quality, or dissolved oxygen will occur as a result of the project.

This simply puts more of a burden on the Federal Energy Regulatory Commission.

As regards section 4 of your bill, I think we concur as well, sir, that it does not create a Federal reservation of land and therefore 4(a) and 4(b) are probably unnecessary.

With those recommended changes, we heartily support your bill, and we hope that in the long run the Henry's Fork will be regarded as one of the jewels of the Federal Wild and Scenic Rivers System, and we strongly support both the administrative actions currently under way and legislative efforts that would come to place it in this system.

Thank you.

[The prepared statement of Mr. Olson follows:]

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TESTIMONY OF W. KENT OLSON

PRESIDENT, AMERICAN RIVERS CONSERVATION COUNCIL

on

S. 2635, a Bill to Protect the Integrity and Quality of Certain Reaches of the Henrys Fork of the Snake River, Idaho

Before the Senate Subcommittee on Water and Power

Monday, August 11, 1986

Thank you Mr. Chairman, for the opportunity to testify on S. 2635 concerning the protection of the Henry's Fork River in Idaho. I especially appreciate the interest that this Committee, its Chairman Senator McClure, and you have shown in the preservation of this remarkable stream.

My name is Ken Olson, and I am the President of the American Rivers Conservation Council. American Rivers is the only national conservation organization dedicated exclusively to the preservation of free-flowing rivers. In its 13 year history, the Council has worked to protect 7000 miles of rivers under the Wild and Scenic Rivers Act and has actively assisted states and local groups with their river conservation efforts. American Rivers has over 6,000 members.

Resource Values

The outstandingly remarkable qualities of the Henrys Fork span a wide variety of subject headings and are usually defined in terms of superlatives by residents and visitors alike. Wallace Stegner once said of the Henrys Fork, "By such a river it is impossible to believe that one will ever be tired or old. Every sense applauds it...it is purity absolute."

Located on the western side of the Yellowstone Plateau (and located within the Greater Yellowstone Ecosystem as defined by the Greater Yellowstone Coalition) the Henrys Fork is found in a huge collapsed volcanic cone, the Island Park Caldera. Being a spring-fed river, the Henrys Fork maintains a fairly consistent temperature of 58 degrees Fahrenheit year-round. By not freezing over in winter, the Henrys Fork provides essential habitat for the once-endangered trumpeter swan, bald eagle, deer, elk, moose, and sandhill crane.

The Henrys Fork is world renowned blue ribbon trout fishery and has been jointly designated by the U.S. Fish and Wildlife Service, the Environmental Protection Agency, and the Idaho Department of Fish and Game as a "highest-valued fishery resource."

The two most spectacular scenic features are the Upper and Lower Mesa Falls, dropping 106 and 70 feet respectively. The National Park Service identified both falls as potential National Natural Landmarks for their significant geological qualities.

Additionally, the upper 10-mile reach of the Henrys Fork is the only stretch of river in the country to be designated as a component of the National Trails System. The Big Spring Water Trail designation is mostly honorary, however, as no form of protection or management plan accompanies the title.

Threats

By far the most serious threat to the Henrys Fork today is that posed by hydropower development. Four developers are pursuing six hydropower projects on 12 miles of the river, including one project on Upper Mesa and one on Lower Mesa Falls.

Preliminary permits were issued in 1983 for the Sheep Falls project (FERC #6707), and in 1984 for the George 1, 2, and 3 projects (FERC #'s 7439, 7440, and 7441 respectively). Applications for preliminary permits were made in 1984 for the Upper and Lower Mesa Falls project (FERC #8044).

The effect of the completion of any or all of these projects would be severe. The spectacular scenery of the falls would, of course, be lost. The trout fisheries would be reduced or potentially eliminated along the affected stretch, which would subsequently have the same effects on fishing and tourist economy, upon which eastern Idaho is heavily reliant.

Another threat related to hydropower development is the proposed retrofit of the existing dam at Island Park. It is our understanding that no stipulations are being considered to control the dissolved oxygen (DO) content or the maintenance of a constant temperature that are both vital to a healthy trout fishery.

The other treats to the Henrys Fork include inappropriate development, heavy fishing pressure, too few fishing access points, bank erosion, overgrazing, and intermittently polluted water. Designation of the river is needed immediately to halt the uncontrolled growth on the river and thorough management guidelines are necessary to prevent future degradation.

The following is an excerpt from the Idaho Rivers Inventory, completed in February of 1984, that has ominous forebodings for the Henrys Fork. "...The elbow to elbow fishermen and their fleet of campers and motorhomes and cars, combined with the seasonal residents and tourists going to and from Yellowstone National Park create a mini, mobile urban center that defines totally different kinds of recreational opportunities than those found in the secluded reaches of the canyons. The concentration of people has resulted in the declining water quality of the Henrys Fork due to pollution by sewage..."

Henrys Fork Studies

Ever since the Wild and Scenic Rivers Act passed in 1968, the Henrys Fork has been eyed by politicians, professional land managers, and conservationists for addition to the federal system.

In 1970, Secretary of Interior Hickel and Secretary of Agriculture Hardin identified the segment of the Henrys Fork from Big Springs to its confluence with the Warm Rivers as a potential addition to the federal system based upon the statutory requirements of Section 5(d) of the Wild and Scenic Rivers Act of 1968.

The Nationwide Rivers Inventory, published by the National Park Service in 1982, also identified the Henrys Fork as containing the necessary "outstandingly remarkable" recreation, geologic, fish and wildlife qualities to merit consideration for the Wild and Scenic River System.

The forest planning process for the Targhee National Forest has recently been completed. The lower Henrys Fork Canyon was evaluated and recommended for

primitive, non-motorized use as defined by the Recreational Opportunity Spectrum while the entire river from Big Springs to the confluence with the Warm River (excluding the Island Park Reservoir) was recommended for Wild and Scenic study.

The State of Idaho has conducted a variety of studies on the Henrys Fork including a resource assessment and boater survey as part of the Idaho Rivers Inventory published in 1984. Idaho also suggested that the Henrys Fork be considered as one of the nine initial components in a as-of-yet undeveloped state wild and scenic river system.

Finally, Idaho State University has studied the river extensively and the newly formed Henrys Fork Foundation has also been sponsoring research on the river.

The Henrys Fork of the Snake River is clearly a river whose highest and best use is in its preservation within the National Wild and Scenic River System. The recreation, wildlife, fishery, and geologic values have been amply documented by studies and recommendations spanning 15 years. Unfortunately, hydropower and over use threaten to despoil the river for all time.

Comments on S. 2635

Today, we have the opportunity to take a first step toward the ultimate protection of the Henrys Fork. Senators James McClure and Steve Symms introduced S. 2635 which will provide crucial protection against hydro development on the river.

S. 2635:
- o permanently prohibits FERC from allowing any new hydro developments of the river, with one exception (Section 2);
- o allows hydropower retrofitting of Island Park Dam "if...significant and permanent alterations of streamflow, habitat, water temperature, and quality will not occur..." (Section 3);
- o clarifies that this act neither asserts a water right nor affects valid existing water rights (Section 4).

American Rivers has the following comments on S. 2635:

Section 3 - Because the trout fishery is so remarkable and any change in the river flow regime could potentially adversely affect it, the standards under which the Island Park Dam retrofit will be allowed should be higher. American Rivers would recommend that lines 14-17 be deleted, and the following wording inserted: "provided, that such license will be denied if FERC determines that any significant alterations of streamflow, habitat, water temperature, water quality, or dissolved oxygen will occur as a result of the project."

Section 4 - This bill does not create a federal reservation of land. It therefore, does not create a federal reservation of water. Thus Section 4(a) is superfluous and should be deleted. The language in Section 4(b) seems to be redundant of (a) and should likewise be deleted.

With these recommended changes, American Rivers supports S. 2635. However, the Henrys Fork should in the long run be one of the jewels in the federal Wild and Scenic Rivers System, and we strongly support both the administrative and legislative efforts underway to place it within this system.

Thank you, Mr. Chairman, for the opportunity to testify.

The CHAIRMAN. Thank you.

Do you both agree that the inclusion of a river within the Wild and Scenic Rivers System, although it establishes a corridor of land for special management directions, is not a withdrawal or reservation of that land?

Ms. SEASE. No, sir; I believe that the establishment of a Wild and Scenic River does imply a reservation of water sufficient for the purposes of that land reservation. It is, however, a very junior right, or would be in this case, and, as has been noted, all of the waters are currently appropriated.

The CHAIRMAN. Mr. Olson?

Mr. OLSON. We have not studied that yet, sir.

The CHAIRMAN. Then your statement is with reference to the withdrawal of hydro development and not with respect to possible designation as a component of the Wild and Scenic Rivers?

Ms. SEASE. Yes, sir. My statement applies only to the ban on licensing and permitting through FERC.

The CHAIRMAN. Now, I certainly want the record to be clear that, while I might desire something different with respect to the reservation doctrine with respect to the establishment of national forests, I am not trying to slip something into this language that would somehow affect that reservation doctrine by way of the provision in this bill.

This bill is intended to be totally neutral on that question, but make clear that we do not establish a new and different reservation by the passage of this act. Now, certainly you know far better than I that the issue of reservation of water for Federal withdrawals or as a result of Federal actions is a very crucial issue.

I am very much concerned that we have seen some action by State agencies and by your group and others asserting reservations sometimes in ways that conflict with what we believe, certainly I believe, to be a conflict with State law, and in effect becomes not an action pursuant to state law, but in some cases a violation of State law or a preemption by the Federal Government.

The wilderness designation and the lawsuits that your organization has sponsored raise that issue rather starkly, and it makes some of us wonder whether we were wise in supporting wilderness designation. As a matter of fact, it makes me thankful that we did not pass an Idaho wilderness bill without having resolved that question.

The action by the National Park Service to assert water rights on behalf of the Federal Government in ways that were certainly beyond any reservation established by the Congress, and where they got their hands slapped by the court where they overstepped their bounds, as in the Dinosaur National Monument, as they sought to protect stream flow for white water rafting as an adjunct to the creation of the national monument, and the court said:

> No, you shall not; that was not the purpose of the monument, the purpose for which the monument was established; therefore, there is no Federal reservation for that purpose.

But the fact that they made the claim makes some of the rest of us rather cautious about investing the Federal Government with any other further basis for making the claim, and that is the

reason for this language, to leave it neutral with respect to the old issue of Federal reservation as a result of designation of the lands as national forests, but to make certain that this enactment can in no way change the existing status of such reservation claims.

I am grateful that you raise the question, because I want to disabuse anybody of the notion I am trying to, by the back door or the side door, subvert the existing question. I just do not want to create another one.

We enacted an even more precise reservation some years ago, at the insistence of my predecessor in this seat, Senator Len Jordan, when the Hell's Canyon National Recreation Area was established and a portion of the river in that area was designated a portion of the Wild and Scenic Rivers, to indicate that as a matter of fact nothing in the designation could possibly impair the future upstream consumptive use of the waters in the Snake River Basin, and that is a matter of law, because he—having spent a number of years of his life in the bottom of Hell's Canyon on a sheep ranch, was conscious of the fact that at times the water on the Snake River was so low that the mail boat could not get upriver from Lewiston, and that was their only means of access other than by trail and horseback.

Well, he was very conscious of the need. He was very wise in foreseeing a problem that many others did not yet see.

And all I am seeking by this language is to make sure that it does not happen inadvertently. And your raising the question gives me the opportunity to make a little bit of legislative history that indeed I do not intend to accomplish anything which would cause you to fear the provision. And I think perhaps that removes or at least diminishes the reason for your objecting to that language.

Ms. SEASE. Sir, if I might, there is a second reason for concern over that provision. I would very much like to see a permanent ban on hydroelectric development on the Henry's Fork moved forward this year and, as you pointed out, the issue of reserve Federal water rights is a subject of a much larger debate.

And it occurs to me that, since this legislation is so clearly not something that creates a Federal reservation, that one need not entangle this legislation in that larger debate.

The CHAIRMAN. I understand that.

Going back to the Power Act in 1920 and the Pelton Dam decision, there is a preemption by the Federal Government when waters are used for the production of power. That is the reason that I think it is appropriate to have some denial here that either the designation or the prohibition is not intended to affect that larger question.

Mr. Olson, do you have any further comment?

Mr. OLSON. No, thank you. I am finished.

The CHAIRMAN. Thank you very much. I think we are both trying to do the same thing, at least in part.

Thank you both for your testimony. That concludes the hearing this morning and the subcommittee will stand adjourned.

[Whereupon, at 11:30 a.m., the hearing was adjourned.]

[Subsequent to the hearing the subcommittee received the following communication:]

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SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
AUG 15 1986
WASHINGTON D.C. 20510

August 14, 1986

The Honorable James A. McClure
Chairman
Energy and Natural Resources Committee
United States Senate
358 Russell Office Building
Washington, D.C. 205106-6150

RE: S2635

Dear Senator McClure:

The Board of Directors of the Twin Falls Canal Company and the North Side Canal Company (Idaho) have asked that I write this letter for inclusion in the Hearing Record for the Hearing held August 11, 1986, on S2635. These entities irrigate approximately 400,000 acres in Magic Valley.

Because of the operation of the Minidoka Project of the Bureau of Reclamation, traditionally, water credited to American Falls Reservoir is stored in Island Park Reservoir in the upper reaches of the Henry's Fork. This is consistant with the operational policy of the Bureau of Reclamation to store the maximum possible amounts of water in the highest reservoirs in the watershed to facilitate the most flexibility in the use of the water. As you are also aware, the flows of the Henry's Fork below Island Park Reservoir constitute a very major part of the American Falls Reservoir Refill on an annual basis during the non-irrigation season.

Because of this interest, the Boards that I represent feel strongly that the Henry's Fork should not be included in the Wild and Scenic River System. We applaud your approach to the problem to protect the many amenities that exist for the

Henry's Fork as detailed in S2635. Henry's Fork has always been a working river and facilitates irrigation and stock water uses as well as the many fish and wildlife and recreational uses. The irrigation community's concern for protection comes about by reason of the multitude of hydroelectric filings which your bill addresses.

We commend you for your approach since it's realistic and something that not only the Congress should pass, but the users can live with. Wild and Scenic Rivers Legislation is truly unnecessary for this reach of Snake River.

Respectfully submitted,

John A. Rosholt

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JAR:pjo